

Introduced by Senator Vargas

February 14, 2011

An act to add Section 17657 to, and to add Title 2.5 (commencing with Section 17701.01) to, the Corporations Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as introduced, Vargas. California Revised Uniform Limited Liability Company Act.

(1) Existing law, the Beverly-Killea Limited Liability Company Act, authorizes a limited liability company to engage in any lawful business activity, as specified, and governs the formation of limited liability companies, including requiring the members to enter into an operating agreement that shall be in writing or oral and to execute and file articles of organization with the Secretary of State.

This bill would repeal that act and enact the California Revised Uniform Limited Liability Company Act which would recast provisions governing the formation and operation of limited liability companies. The bill would also authorize an operating agreement to be in a record or implied, in addition to being in writing or oral, and authorize a combination of those forms. The bill would rename the term that refers to the document members are required to file with the Secretary of State as a certificate of organization. The bill would also provide for a new, low-profit limited liability company that would be authorized to be formed and operated to accomplish charitable purposes, as specified.

(2) Existing law establishes requirements and procedures for membership interests in limited liability companies, including voting, meeting, and inspection rights. Existing law also specifies the duties and obligations of the managers of a limited liability company, including

member-managers, as specified. Existing law does not provide for the existence of a series of a limited liability company.

This bill would provide that a member is not an agent of a limited liability company merely by being a member. The bill would also distinguish between a manager-managed limited liability company and a member-managed limited liability company for purposes of imposing fiduciary duties only on persons in control of a limited liability company. The bill would also provide for a series of a limited liability company comprised of certain assets and liabilities identified by a limited liability company as separate from the assets and liabilities of the other series of the limited liability company.

(3) Existing law allows a person to reserve a name for a limited liability company for no longer than 2 consecutive 60-day periods and provides that a limited liability company is not formed until it has at least one member.

This bill would instead allow a person to reserve a name for a limited liability company for up to 2 consecutive 90-day periods. The bill would also allow a person to file a certificate of organization up to 90 days before delivering to the Secretary of State a notice that the limited liability company has at least one member.

(4) Existing law provides that the Secretary of State may issue a certificate of good standing with respect to a limited liability company. Existing law requires that a limited liability company file with the Secretary of State a statement of information biannually.

This bill would also authorize the Secretary of State to issue a certificate of existence with respect to a limited liability company and a certificate of authorization with respect to a foreign limited liability company. The bill would require a limited liability company to file biannually with the Secretary of State a report in lieu of a statement of information.

(5) Existing law does not specifically provide for jurisdiction of courts in matters regarding a limited liability company.

This bill would allow a limited liability company to be subject to the nonexclusive jurisdiction of courts in another state or the exclusive jurisdiction of California courts. The bill would also allow a member to consent to arbitration, as specified.

(6) Existing law provides that a manager of a manager-managed limited liability company and the members of a member-managed limited liability company have authority to execute documents on behalf of, and to bind, the limited liability company.

This bill would provide that a limited liability company may deliver to the Secretary of State a statement of authority identifying the individuals who have the ability to execute documents on behalf of, and to bind, the limited liability company.

(7) Existing law does not specifically provide for a member to dissociate from a limited liability company.

This bill would specify when a member would be dissociated from a limited liability company and the effects of dissociation on the member.

(8) Existing law establishes capital contribution standards and liability of members, and regulates the allocation of profits and losses, distributions of money and property, withdrawal of membership, assignment of interests, and dissolution of limited liability companies. Existing law requires the registration of foreign limited liability companies, as defined, with the Secretary of State, and prohibits the transaction of business in this state by an unregistered foreign limited liability company, subject to specified penalties. Existing law also regulates the merger of a limited liability company with one or more limited liability companies or other business entities, as specified, including requiring an agreement of merger and protection of the rights and liabilities of limited liability companies, creditors, and dissenting members.

This bill would revise and recast those provisions.

(9) Because this bill would make certain actions unlawful, the bill would impose a state-mandated local program by expanding the scope of certain crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17657 is added to the Corporations Code,
- 2 to read:
- 3 17657. This title shall become inoperative on January 1, 2013,
- 4 and is repealed on January 1, 2015.

1 SEC. 2. Title 2.5 (commencing with Section 17701.01) is added
2 to the Corporations Code, to read:

3
4 TITLE 2.5. CALIFORNIA REVISED UNIFORM LIMITED
5 LIABILITY COMPANY ACT
6

7 Article 1. General Provisions
8

9 17701.01. This title may be cited as the California Revised
10 Uniform Limited Liability Company Act.

11 17701.02. In this title:

12 (a) “Certificate of organization” means the certificate required
13 by Section 17702.01. The term includes the certificate as amended
14 or restated.

15 (b) “Contribution” means any benefit provided by a person to
16 a limited liability company:

17 (1) In order to become a member upon formation of the limited
18 liability company and in accordance with an agreement between
19 or among the persons that have agreed to become the initial
20 members of the limited liability company.

21 (2) In order to become a member after formation of the limited
22 liability company and in accordance with an agreement between
23 the person and the limited liability company.

24 (3) In the person’s capacity as a member and in accordance with
25 the operating agreement or an agreement between the member and
26 the limited liability company.

27 (c) “Debtor in bankruptcy” means a person that is the subject
28 of either of the following:

29 (1) An order for relief under Title 11 of the United States Code
30 or a successor statute of general application.

31 (2) A comparable order under federal, state, or foreign law
32 governing bankruptcy or insolvency, an assignment for the benefit
33 of creditors, or an order appointing a trustee, receiver, or liquidator
34 of the person or of all or substantially all of the person’s property.

35 (d) “Designated office” means either of the following:

36 (1) The office that a limited liability company is required to
37 designate and maintain under Section 17701.13.

38 (2) The principal office of a foreign limited liability company.

39 (e) “Distribution,” except as otherwise provided in subdivision
40 (g) of Section 17704.05, means a transfer of money or other

1 property from a limited liability company to another person on
2 account of a transferable interest.

3 (f) “Domestic” means organized under the laws of this state
4 when used in relation to any limited liability company, other
5 business entity, or person other than a natural person.

6 (g) “Effective,” with respect to a record required or permitted
7 to be delivered to the Secretary of State for filing under this title,
8 means effective under subdivision (c) of Section 17702.05.

9 (h) “Foreign limited liability company” means an unincorporated
10 entity formed under the law of a jurisdiction other than this state
11 and denominated by that law as a limited liability company.

12 (i) “Limited liability company,” except in the phrase “foreign
13 limited liability company,” means an entity formed under this title.

14 (j) “Low-profit limited liability company” means a limited
15 liability company that has set forth in its certificate of organization
16 a business purpose that satisfies, and which limited liability
17 company is at all times operated to satisfy, each of the following
18 requirements:

19 (1) The entity (A) significantly furthers the accomplishment of
20 one or more charitable or educational purposes within the meaning
21 of Section 170(c)(2)(B) of the Internal Revenue Code, and (B)
22 would not have been formed but for the entity’s relationship to the
23 accomplishment of charitable or educational purposes.

24 (2) No significant purpose of the entity is the production of
25 income or the appreciation of property; provided however, that
26 the fact that an entity produces significant income or capital
27 appreciation shall not, in the absence of other factors, be conclusive
28 evidence of a significant purpose involving the production of
29 income or the appreciation of property.

30 (3) No purpose of the entity is to accomplish one or more
31 political or legislative purposes within the meaning of Section
32 170(c)(2)(D) of the Internal Revenue Code.

33 (k) “Majority of the managers” unless otherwise provided in
34 the operating agreement, means more than 50 percent of the
35 interests of managers in current profits of the limited liability
36 company.

37 (l) “Majority of the members” unless otherwise provided in the
38 operating agreement, means more than 50 percent of the
39 membership interests of members in current profits of the limited
40 liability company.

(m) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subdivision (c) of Section 17704.07.

(n) “Manager-managed limited liability company” means a limited liability company that qualifies under subdivision (a) of Section 17704.07.

(o) “Member” means a person that has become a member of a limited liability company under Section 17704.01 and has not dissociated under Section 17706.02.

(p) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(q) “Membership interest” means a member’s rights in the limited liability company, including the member’s transferrable interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(r) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in subdivision (a) of Section 17701.10. An operating agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the operating agreement. The term includes the agreement as amended or restated.

(s) “Organization” means, whether domestic or foreign, a partnership whether general or limited, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, or statutory business trust having a governing statute.

(t) “Organizer” means a person that acts under Section 17702.01 to form a limited liability company.

(u) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

1 (v) “Principal office” means the principal executive office of a
2 limited liability company or foreign limited liability company,
3 whether or not the office is located in this state.

4 (w) “Record” means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium and is
6 retrievable in perceivable form.

7 (x) “Series” means one or more designated series of assets of a
8 limited liability company established in accordance with Section
9 17712.01.

10 (y) “Sign” means, with the present intent to authenticate or adopt
11 a record either of the following:

12 (1) To execute or adopt a tangible symbol.

13 (2) To attach to or logically associate with the record an
14 electronic symbol, sound, or process.

15 (z) “State” means a state of the United States, the District of
16 Columbia, Puerto Rico, the United States Virgin Islands, or any
17 territory or insular possession subject to the jurisdiction of the
18 United States.

19 (aa) “Transfer” includes an assignment, conveyance, deed, bill
20 of sale, lease, mortgage, security interest, encumbrance, gift, and
21 transfer by operation of law.

22 (ab) “Transferable interest” means the right, as originally
23 associated with a person’s capacity as a member, to receive
24 distributions from a limited liability company in accordance with
25 the operating agreement, whether or not the person remains a
26 member or continues to own any part of the right.

27 (ac) “Transferee” means a person to which all or part of a
28 transferable interest has been transferred, whether or not the
29 transferor is a member.

30 17701.03. (a) A person knows a fact when either of the
31 following applies:

32 (1) The person has actual knowledge of the fact.

33 (2) The person is deemed to know the fact under paragraph (1)
34 of subdivision (d) or law other than this title.

35 (b) A person has notice of a fact when either of the following
36 applies:

37 (1) The person has reason to know the fact from all of the facts
38 known to the person at the time in question.

39 (2) The person is deemed to have notice of the fact under
40 paragraph (2) of subdivision (d).

1 (c) A person notifies another of a fact by taking steps reasonably
2 required to inform the other person in ordinary course, whether or
3 not the other person knows the fact.

4 (d) A person that is not a member is deemed:

5 (1) To know of a limitation on authority to transfer real property
6 as provided in subdivision (g) of Section 17703.02.

7 (2) To have notice, with respect to a limited liability company,
8 of all of the following:

9 (A) Dissolution, 90 days after a certificate of dissolution under
10 subdivision (a) of Section 17707.08 has been filed.

11 (B) Termination, 90 days after a certificate of cancellation under
12 either Section 17707.02 or subdivision (b) of Section 17707.08
13 has been filed.

14 (C) Merger or conversion, 90 days after certificate of merger
15 or conversion under Article 10 (commencing with Section
16 17710.01) becomes effective.

17 (D) Revival, 90 days after a certificate of revival under Section
18 17707.10 has been filed.

19 (e) A member's knowledge, notice, or receipt of a notification
20 of a fact relating to the limited liability company is not knowledge,
21 notice, or receipt of a notification of a fact by the limited liability
22 company solely by reason of the member's capacity as a member.

23 17701.04. (a) A limited liability company is an entity distinct
24 from its members.

25 (b) A limited liability company may have any lawful purpose,
26 regardless of whether for profit, except the banking business, the
27 business of issuing policies of insurance and assuming insurance
28 risks, or the trust company business. A domestic or foreign limited
29 liability company may render services that may be lawfully
30 rendered only pursuant to a license, certificate, or registration
31 authorized by the Business and Professions Code, the Chiropractic
32 Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, if
33 the applicable provisions of the Business and Professions Code,
34 the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship
35 Brokers Act authorize a limited liability company to hold that
36 license, certificate, or registration.

37 (c) A limited liability company has perpetual duration.

38 (d) If the limited liability company is a low-profit limited
39 liability company described in subdivision (j) of Section 17701.02,

1 that the limited liability company is a low-profit limited liability
2 company.

3 (e) Notwithstanding subdivision (a) and as specifically provided
4 in this subdivision, a limited liability company may operate as a
5 health care service plan licensed pursuant to Chapter 2.2
6 (commencing with Section 1340) of Division 2 of the Health and
7 Safety Code if the limited liability company is a subsidiary of a
8 health care service plan licensed pursuant to those provisions and
9 the limited liability company is established to serve an existing
10 line of business of the parent health care service plan.
11 Notwithstanding any other law, the tort or contract liability of a
12 limited liability company created to operate as a health care service
13 plan under this subdivision and its members is not limited or
14 restricted in any manner because of the limited liability company
15 status of the health care service plan.

16 17701.05. (a) A limited liability company established under
17 this title has the power and capacity in the limited liability
18 company's own name to do all of the following:

19 (1) Sue and be sued.

20 (2) Contract.

21 (3) Hold and convey title to assets of the limited liability
22 company, including real property, personal property, and intangible
23 property.

24 (4) Grant lien and security interests in the assets of the limited
25 liability company.

26 (b) A series established under this title has the power and
27 capacity in the series' own name to do all of the following:

28 (1) Sue and be sued.

29 (2) Contract.

30 (3) Hold and convey title to assets of the series, including real
31 property, personal property and intangible property.

32 (4) Grant liens and security interests in assets of the series.

33 17701.06. The law of this state governs all of the following:

34 (a) The internal affairs of a limited liability company.

35 (b) The liability of a member as member and a manager as
36 manager for the debts, obligations, or other liabilities of a limited
37 liability company.

38 (c) The authority of the members and agents of a limited liability
39 company.

(d) The availability of the assets of a series or the obligations of another series or the limited liability company.

17701.07. (a) It is the policy of this title and this state to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.

(b) Unless displaced by particular provisions of this title, the principles of law and equity supplement this title.

(c) Rules that statutes in derogation of the common law are to be strictly construed shall have no application to this title.

(d) Unless the context otherwise requires, as used in this title, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders.

17701.08. (a) The name of a limited liability company shall contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.,” “LLC,” “L.C.,” or “LC.” “Limited” may be abbreviated as “Ltd.,” and “company” may be abbreviated as “Co.,” provided, however, that if the limited liability company is a low-profit limited liability company described in subdivision (j) of Section 17701.02, the last words of its name shall contain either the words “low-profit limited liability company” or the abbreviation “L3C” or “L.3.C.”

(b) Unless authorized by subdivision (c), the name of a limited liability company shall be distinguishable in the records of the Secretary of State from all of the following:

(1) The name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state.

(2) The limited liability company name stated in each certificate of organization that contains the statement as provided in paragraph (3) of subdivision (b) of Section 17702.01 and that has not lapsed.

(3) Each name reserved under Section 17701.09.

(c) A limited liability company may apply to the Secretary of State for authorization to use a name that does not comply with subdivision (b). The Secretary of State shall authorize use of the name applied for if, as to each noncomplying name, either of the following applies:

(1) The present user, registrant, or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to

1 change the noncomplying name to a name that complies with
2 subdivision (b) and is distinguishable in the records of the Secretary
3 of State from the name applied for.

4 (2) The applicant delivers to the Secretary of State a certified
5 copy of the final judgment of a court establishing the applicant's
6 right to use in this state the name applied for.

7 (d) Subject to Section 17708.04, this section applies to a foreign
8 limited liability company transacting business in this state that has
9 a certificate of authority to transact business in this state or that
10 has applied for a certificate of authority.

11 17701.09. (a) A person may reserve the exclusive use of the
12 name of a limited liability company, including a fictitious or
13 assumed name for a foreign limited liability company whose name
14 is not available, by delivering an application to the Secretary of
15 State for filing. The application shall state the name and address
16 of the applicant and the name proposed to be reserved. If the
17 Secretary of State finds that the name applied for is available, it
18 shall be reserved for the applicant's exclusive use for up to two
19 consecutive 90-day periods.

20 (b) The owner of a name reserved for a limited liability company
21 may transfer the reservation to another person by delivering to the
22 Secretary of State for filing a signed notice of the transfer which
23 states the name and address of the transferee.

24 17701.10. (a) Except as otherwise provided in subdivisions
25 (b) and (c), the operating agreement governs all of the following:

26 (1) Relations among the members as members and between the
27 members and the limited liability company.

28 (2) The rights and duties under this title of a person in the
29 capacity of manager.

30 (3) The activities of the limited liability company and the
31 conduct of those activities.

32 (4) The means and conditions for amending the operating
33 agreement.

34 (b) To the extent the operating agreement does not otherwise
35 provide for a matter described in subdivision (a), this title governs
36 the matter.

37 (c) An operating agreement shall not do any of the following:

38 (1) Vary a limited liability company's capacity, or a series
39 thereof, under Section 17701.05 to sue and be sued in its own
40 name.

- 1 (2) Vary the law applicable under Section 17701.06.
- 2 (3) Vary the power of the court under Section 17702.04.
- 3 (4) Subject to subdivisions (d) to (g), inclusive, eliminate the
- 4 duty of loyalty, the duty of care, or any other fiduciary duty.
- 5 (5) Subject to subdivisions (d) to (g), inclusive, eliminate the
- 6 contractual obligation of good faith and fair dealing under
- 7 subdivision (d) of Section 17704.09.
- 8 (6) Unreasonably restrict the duties and rights stated in Section
- 9 17704.10.
- 10 (7) Vary the power of a court to decree dissolution in the
- 11 circumstances specified in subdivision (a) of Section 17707.03 or
- 12 the provisions for avoidance of dissolution in subdivision (b) of
- 13 Section 17707.03.
- 14 (8) Except as otherwise expressly provided in the operating
- 15 agreement, vary the requirements of Sections 17707.04 to
- 16 17707.08, inclusive.
- 17 (9) Unreasonably restrict the right of a member to maintain an
- 18 action under Article 9 (commencing with Section 17709.01).
- 19 (10) Restrict the right to approve a merger, conversion, or
- 20 domestication under Section 17710.14 to a member that will have
- 21 personal liability with respect to a surviving, converted, or
- 22 domesticated organization.
- 23 (11) Except as otherwise provided in subdivision (b) of Section
- 24 17701.12, restrict the rights under this title of a person other than
- 25 a member or manager.
- 26 (12) Vary any provision under Article 10 (commencing with
- 27 Section 17710.01).
- 28 (13) Vary any provision under Article 12 (commencing with
- 29 Section 17712.01).
- 30 (d) Eliminate the duty of loyalty under subdivision (b) of Section
- 31 17704.09, but the operating agreement may do any of the
- 32 following:
- 33 (1) Identify specific types or categories of activities that do not
- 34 violate the duty of loyalty, if not manifestly unreasonable.
- 35 (2) Specify the number or percentage of members that may
- 36 authorize or ratify, after full disclosure to all members of all
- 37 material facts, a specific act or transaction that otherwise would
- 38 violate the duty of loyalty.
- 39 (e) Unreasonably reduce the duty of care under subdivision (c)
- 40 of Section 17704.09.

(f) Eliminate the obligation of good faith and fair dealing under subdivision (d) of Section 17704.09, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

(g) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this title and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(h) The operating agreement may alter or eliminate the indemnification for a member or manager provided by subdivision (a) of Section 17704.08 and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for the following:

- (1) Breach of the duty of loyalty.
- (2) A financial benefit received by the member or manager to which the member or manager is not entitled.
- (3) A breach of a duty under Section 17704.06.
- (4) Intentional infliction of harm on the limited liability company or a member.
- (5) An intentional violation of criminal law.

(i) A court shall decide any claim under subdivision (d) that a term of an operating agreement is manifestly unreasonable.

(1) The court shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time.

(2) The court may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that either of the following apply:

- (A) The objective of the term is unreasonable.
- (B) The term is an unreasonable means to achieve the provision's objective.

(j) An operating agreement may provide that:

(1) A member or transferee that fails to perform in accordance with, or to comply with the terms and conditions of, the operating

1 agreement shall be subject to specified penalties or specified
2 consequences.

3 (2) At the time or upon the happening of events specified in the
4 operating agreement, a member or transferee may be subject to
5 specified penalties or specified consequences. The penalty or
6 consequence may include and take the form of reducing or
7 eliminating the defaulting member's or transferee's proportionate
8 interest in a limited liability company, subordinating the member's
9 or transferee's membership interest to that of nondefaulting
10 members or transferees, forcing a sale of that membership interest,
11 forfeiting the defaulting member's or transferee's membership
12 interest, the lending by other members or transferees of the amount
13 necessary to meet the defaulting member's or transferee's
14 commitment, a fixing of the value of the defaulting member's or
15 transferee's membership interest by appraisal or by formula and
16 redemption or sale of the membership interest at that value, or
17 other penalty or consequence.

18 17701.11. (a) A limited liability company is bound by and
19 may enforce the operating agreement, whether or not the limited
20 liability company has itself manifested assent to the operating
21 agreement.

22 (b) A person that becomes a member of a limited liability
23 company is deemed to assent to the operating agreement.

24 (c) Two or more persons intending to become the initial
25 members of a limited liability company may make an agreement
26 providing that upon the formation of the limited liability company
27 the agreement will become the operating agreement. One person
28 intending to become the initial member of a limited liability
29 company may assent to terms providing that upon the formation
30 of the limited liability company the terms will become the operating
31 agreement.

32 17701.12. (a) An operating agreement may specify that its
33 amendment requires the approval of a person that is not a party to
34 the operating agreement or the satisfaction of a condition. An
35 amendment is ineffective if its adoption does not include the
36 required approval or satisfy the specified condition.

37 (b) The obligations of a limited liability company and its
38 members to a person in the person's capacity as a transferee or
39 dissociated member are governed by the operating agreement.
40 Subject only to any court order issued under paragraph (2) of

1 subdivision (b) of Section 17705.03 to effectuate a charging order,
2 an amendment to the operating agreement made after a person
3 becomes a transferee or dissociated member is effective with regard
4 to any debt, obligation, or other liability of the limited liability
5 company or its members to the person in the person's capacity as
6 a transferee or dissociated member.

7 (c) If a record that has been delivered by a limited liability
8 company to the Secretary of State for filing and has become
9 effective under this title contains a provision that would be
10 ineffective under subdivision (c) of Section 17701.10 if contained
11 in the operating agreement, the provision is likewise ineffective
12 in the record.

13 (d) Subject to subdivision (c), if a record that has been delivered
14 by a limited liability company to the Secretary of State for filing
15 and has become effective under this title conflicts with a provision
16 of the operating agreement both of the following apply:

17 (1) The operating agreement prevails as to members, dissociated
18 members, transferees, and managers.

19 (2) The record prevails as to other persons to the extent they
20 reasonably rely on the record.

21 17701.13. (a) A limited liability company shall designate and
22 continuously maintain in this state both of the following:

23 (1) An office, which need not be a place of its activity in this
24 state.

25 (2) An agent for service of process.

26 (b) A foreign limited liability company that has a certificate of
27 authority under Section 17708.02 shall designate and continuously
28 maintain in this state an agent for service of process.

29 (c) An agent for service of process of a limited liability company
30 or foreign limited liability company shall be an individual who is
31 a resident of this state or other person with authority to transact
32 business in this state.

33 17701.14. (a) A limited liability company or foreign limited
34 liability company may change its designated office, its agent for
35 service of process, or the address of its agent for service of process
36 by delivering to the Secretary of State for filing a statement of
37 change containing all of the following:

38 (1) The name of the limited liability company.

39 (2) The street and mailing addresses of its current designated
40 office.

1 (3) If the current designated office is to be changed, the street
2 and mailing addresses of the new designated office.

3 (4) The name, street, and mailing addresses of its current agent
4 for service of process.

5 (5) If the current agent for service of process or an address of
6 the agent is to be changed, the new information.

7 (b) Subject to subdivision (c) of Section 17702.05, a statement
8 of change is effective when filed by the Secretary of State.

9 17701.15. (a) To resign as an agent for service of process of
10 a limited liability company or foreign limited liability company,
11 the agent shall deliver to the Secretary of State for filing a statement
12 of resignation containing the limited liability company name and
13 stating that the agent is resigning.

14 (b) The Secretary of State shall file a statement of resignation
15 delivered under subdivision (a) and mail or otherwise provide or
16 deliver a copy to the designated office of the limited liability
17 company or foreign limited liability company and another copy
18 to the principal office of the limited liability company if the mailing
19 address of the principal office appears in the records of the
20 Secretary of State and is different from the mailing address of the
21 designated office.

22 (c) An agency for service of process terminates on the earlier
23 of the following:

24 (1) The 31st day after the Secretary of State files the statement
25 of resignation.

26 (2) When a record designating a new agent for service of process
27 is delivered to the Secretary of State for filing on behalf of the
28 limited liability company and becomes effective.

29 17701.16. (a) An agent for service of process appointed by a
30 limited liability company or foreign limited liability company is
31 an agent of the limited liability company for service of any process,
32 notice, or demand required or permitted by law to be served on
33 the limited liability company.

34 (b) If a limited liability company or foreign limited liability
35 company does not appoint or maintain an agent for service of
36 process in this state or the agent for service of process cannot with
37 reasonable diligence be found at the agent's street address, the
38 Secretary of State is an agent of the limited liability company upon
39 whom process, notice, or demand may be served.

1 (c) Service of any process, notice, or demand on the Secretary
2 of State as an agent for a limited liability company or foreign
3 limited liability company may be made by delivering to the
4 Secretary of State duplicate copies of the process, notice, or
5 demand. If a process, notice, or demand is served on the Secretary
6 of State, the Secretary of State shall forward one of the copies by
7 registered or certified mail, return receipt requested, to the limited
8 liability company at its designated office.

9 (d) Service is effected under subdivision (c) at the earliest of
10 the following:

11 (1) The date the limited liability company or foreign limited
12 liability company receives the process, notice, or demand.

13 (2) The date shown on the return receipt, if signed on behalf of
14 the limited liability company.

15 (3) Five days after the process, notice, or demand is deposited
16 with the United States Postal Service, if correctly addressed and
17 with sufficient postage.

18 (e) The Secretary of State shall keep a record of each process,
19 notice, and demand served pursuant to this section and record the
20 time of, and the action taken regarding, the service.

21 (f) This section does not affect the right to serve process, notice,
22 or demand in any other manner provided by law.

23 17701.17. (a) A member may, in a written operating agreement
24 or other writing, consent to be subject to the nonexclusive
25 jurisdiction of the courts of a specified jurisdiction, or the exclusive
26 jurisdiction of the courts of this state.

27 (b) If a member desires to use the arbitration process, that
28 member may, in a written operating agreement or other writing,
29 consent to be nonexclusively subject to arbitration in a specified
30 state, or to be exclusively subject to arbitration in this state.

31 (c) Along with this consent to the jurisdiction of courts or
32 arbitration, a member may consent to be served with legal process
33 in the manner prescribed in the operating agreement or other
34 writing.

Article 2. Formation: Certificate of Organization and Other
Filings

17702.01. (a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Secretary of State for filing a certificate of organization.

(b) A certificate of organization shall state all of the following:

(1) The name of the limited liability company, which shall comply with Section 17701.08.

(2) The street and mailing addresses of the initial designated office and the name and the street and mailing addresses of the initial agent for service of process of the limited liability company.

(3) If the limited liability company will have no members when the Secretary of State files the certificate, a statement to that effect.

(4) If the limited liability company will have one or more designated series of assets subject to limitations on liabilities, a statement to that effect.

(c) Subject to subdivision (c) of Section 17701.12, a certificate of organization may also contain statements as to matters other than those required by subdivision (b). However, a statement in a certificate of organization is not effective as a statement of authority.

(d) Unless the filed certificate of organization contains the statement as provided in paragraph (3) of subdivision (b), all of the following rules apply:

(1) A limited liability company is formed when the Secretary of State has filed the certificate of organization and the limited liability company has at least one member, unless the certificate states a delayed effective date pursuant to subdivision (c) of Section 17702.05.

(2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Secretary of State for filing and the Secretary of State files the certificate.

(3) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the Secretary of State is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

1 (e) If a filed certificate of organization contains a statement as
2 provided in paragraph (3) of subdivision (b), all of the following
3 rules apply:

4 (1) The certificate lapses and is void unless, within 90 days from
5 the date the Secretary of State files the certificate, an organizer
6 signs and delivers to the Secretary of State for filing, a notice
7 stating both of the following:

8 (A) That the limited liability company has at least one member.

9 (B) The date on which a person or persons became the limited
10 liability company's initial member or members.

11 (2) If an organizer complies with paragraph (1), a limited
12 liability company is deemed formed as of the date of initial
13 membership stated in the notice delivered pursuant to paragraph
14 (1).

15 (3) Except in a proceeding by this state to dissolve a limited
16 liability company, the filing of the notice described in paragraph
17 (1) by the Secretary of State is conclusive proof that the organizer
18 satisfied all conditions to the formation of a limited liability

19 17702.02. (a) A certificate of organization may be amended
20 or restated at any time.

21 (b) To amend its certificate of organization, a limited liability
22 company shall deliver to the Secretary of State for filing an
23 amendment stating all of the following:

24 (1) The name of the limited liability company.

25 (2) The date of filing of its certificate of organization.

26 (3) The changes the amendment makes to the certificate as most
27 recently amended or restated.

28 (c) To restate its certificate of organization, a limited liability
29 company shall deliver to the Secretary of State for filing a
30 restatement, designated as such in its heading, stating, as
31 applicable, the following:

32 (1) In the heading or an introductory paragraph, the limited
33 liability company's present name and the date of the filing of the
34 limited liability company's initial certificate of organization.

35 (2) If the limited liability company's name has been changed
36 at any time since the limited liability company's formation, each
37 of the limited liability company's former names.

38 (3) The changes the restatement makes to the certificate as most
39 recently amended or restated.

(d) Subject to subdivision (c) of Section 17701.12 and subdivision (c) of Section 17702.05, an amendment to or restatement of a certificate of organization is effective when filed by the Secretary of State.

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly do the following:

(1) Cause the certificate to be amended.

(2) If appropriate, deliver to the Secretary of State for filing a statement of change under Section 17701.14 or a statement of correction under Section 17702.06.

(f) If the limited liability company is a low-profit limited liability company described in subdivision (j) of Section 17701.02 that has ceased to meet any of the requirements of subdivision (j) of Section 17701.02, the limited liability company shall file a certificate of amendment with the Secretary of State within 30 days after ceasing to meet those requirements and amend its name to conform with the requirements in Section 17701.08 governing limited liability company names.

17702.03. (a) A record delivered to the Secretary of State for filing pursuant to this title shall be signed as follows:

(1) Except as otherwise provided in paragraphs (2) to (4), inclusive, a record signed on behalf of a limited liability company shall be signed by a person authorized by the limited liability company.

(2) A limited liability company's initial certificate of organization shall be signed by at least one person acting as an organizer.

(3) A notice under paragraph (1) of subdivision (e) of Section 17702.01 shall be signed by an organizer.

(4) A record filed on behalf of a dissolved limited liability company that has no members shall be signed by the person winding up the limited liability company's activities or a person appointed under Section 17707.04 to wind up those activities.

(5) A statement of cancellation under paragraph (2) of subdivision (d) Section 17702.01 shall be signed by each organizer that signed the initial certificate of organization, but a personal

1 representative of a deceased or incompetent organizer may sign
2 in the place of the decedent or incompetent.

3 (6) A statement of denial by a person under Section 17703.03
4 shall be signed by that person.

5 (7) Any other record shall be signed by the person on whose
6 behalf the record is delivered to the Secretary of State.

7 (b) Any record filed under this title may be signed by an agent.

8 (c) A limited liability company may record in the office of the
9 county recorder of any county in this state, and county recorders,
10 on request, shall record a certified copy of the limited liability
11 company certificate of organization and any exhibit or attachment,
12 or any amendment or correction thereto, that has been filed in the
13 office of the Secretary of State. A foreign limited liability company
14 may record in the office of the county recorder of any county in
15 the state a certified copy of the limited liability company certificate
16 of authority, or any amendment thereto, that has been filed in the
17 office of the Secretary of State. The recording shall create a
18 conclusive presumption in favor of any bona fide purchaser or
19 encumbrancer for value of the limited liability company real
20 property located in the county in which the certified copy has been
21 recorded, of the statements contained therein.

22 (d) If the Secretary of State determines that an instrument
23 submitted for filing or otherwise submitted does not conform to
24 the law and returns it to the person submitting it, the instrument
25 may be resubmitted accompanied by a written opinion of a member
26 of the State Bar of California submitting the instrument or
27 representing the person submitting it, to the effect that the specific
28 provisions of the instrument objected to by the Secretary of State
29 do conform to law and stating the points and authorities upon
30 which the opinion is based. The Secretary of State shall rely, with
31 respect to any disputed point of law, other than the application of
32 Sections 17701.08, 17701.09, 17708.02, and 17708.03, upon that
33 written opinion in determining whether the instrument conforms
34 to law. The date of filing in that case shall be the date the
35 instrument is received on resubmission.

36 17702.04. (a) If a person required by this title to sign a record
37 or deliver a record to the Secretary of State for filing under this
38 title does not do so, any other person that is aggrieved may petition
39 the superior court to order any of the following:

40 (1) The person to sign the record.

1 (2) The person to deliver the record to the Secretary of State for
2 filing.

3 (3) The Secretary of State to file the record unsigned.

4 (b) If a petitioner under subdivision (a) is not the limited liability
5 company or foreign limited liability company to which the record
6 pertains, the petitioner shall make the limited liability company a
7 party to the action.

8 17702.5. (a) A record authorized or required to be delivered
9 to the Secretary of State for filing under this title shall be captioned
10 to describe the record's purpose, be in a medium permitted by the
11 Secretary of State, and be delivered to the Secretary of State. If
12 the filing fees have been paid, unless the Secretary of State
13 determines that a record does not comply with the filing
14 requirements of this title, the Secretary of State shall file the record
15 and do the following:

16 (1) For a statement of denial under Section 17703.03, send a
17 copy of the filed statement and a receipt for the fees to the person
18 on whose behalf the statement was delivered for filing and to the
19 limited liability company.

20 (2) For all other records, send a copy of the filed record and a
21 receipt for the fees to the person on whose behalf the record was
22 filed.

23 (b) Upon request and payment of the requisite fee, the Secretary
24 of State shall send to the requester a certified copy of a requested
25 record.

26 (c) Except as otherwise provided in Sections 17701.15 and
27 17702.06 and except for a certificate of organization that contains
28 a statement as provided in paragraph (3) of subdivision (b) Section
29 17702.01, a record delivered to the Secretary of State for filing
30 under this title may specify a delayed effective date. Subject to
31 Section 17701.15, paragraph (1) of subdivision (d) of Section
32 17702.01, and Section 17702.06, a record filed by the Secretary
33 of State is effective as follows:

34 (1) If the record does not specify a delayed effective date, on
35 the date the record is filed as evidenced by the Secretary of State's
36 endorsement of the date on the record.

37 (2) If the record specifies a delayed effective date, on the earlier
38 of the following:

39 (A) The specified date.

40 (B) The 90th day after the record is filed.

1 17702.06. (a) A limited liability company or foreign limited
2 liability company may deliver to the Secretary of State for filing
3 a statement of correction to correct a record previously delivered
4 by the limited liability company to the Secretary of State and filed
5 by the Secretary of State, if at the time of filing the record
6 contained inaccurate information or was defectively signed.

7 (b) A statement of correction under subdivision (a) may not
8 state a delayed effective date and shall do all of the following:

9 (1) Describe the record to be corrected, including its filing date,
10 or attach a copy of the record as filed.

11 (2) Specify the inaccurate information and the reason it is
12 inaccurate or the manner in which the signing was defective.

13 (3) Correct the defective signature or inaccurate information.

14 (c) When filed by the Secretary of State, a statement of
15 correction under subdivision (a) is effective retroactively as of the
16 effective date of the record the statement corrects, but the statement
17 is effective when filed:

18 (1) For the purposes of subdivision (d) of Section 17701.03.

19 (2) As to persons that previously relied on the uncorrected record
20 and would be adversely affected by the retroactive effect.

21 17702.07. (a) If a record delivered to the Secretary of State
22 for filing under this title and filed by the Secretary of State contains
23 inaccurate information, a person that suffers a loss by reliance on
24 the information may recover damages for the loss as follows:

25 (1) A person that signed the record, or caused another to sign
26 it on the person's behalf, and knew the information to be inaccurate
27 at the time the record was signed.

28 (2) Subject to subdivision (b), a member of a member-managed
29 limited liability company or the manager of a manager-managed
30 limited liability company, if all of the following apply:

31 (A) The record was delivered for filing on behalf of the limited
32 liability company.

33 (B) The member or manager had notice of the inaccuracy for a
34 reasonably sufficient time before the information was relied upon
35 so that, before the reliance, the member or manager reasonably
36 could have done all of the following:

37 (i) Effected an amendment under Section 17702.02.

38 (ii) Filed a petition under Section 17702.04.

1 (iii) Delivered to the Secretary of State for filing a statement of
2 change under Section 17701.14 or a statement of correction under
3 Section 17702.06.

4 (b) To the extent that the operating agreement of a
5 member-managed limited liability company expressly relieves a
6 member of responsibility for maintaining the accuracy of
7 information contained in records delivered on behalf of the limited
8 liability company to the Secretary of State for filing under this title
9 and imposes that responsibility on one or more other members,
10 the liability stated in paragraph (2) of subdivision (a) applies to
11 those other members and not to the member that the operating
12 agreement relieves of the responsibility.

13 (c) An individual who signs a record authorized or required to
14 be filed under this title affirms under penalty of perjury that the
15 information stated in the record is accurate.

16 17702.08. (a) The Secretary of State, upon request and
17 payment of the requisite fee, shall furnish to any person a certificate
18 of existence for a limited liability company if the records filed in
19 the office of the Secretary of State show that the limited liability
20 company has been formed under Section 17702.01 and the
21 Secretary of State has not filed a certificate of dissolution under
22 Section 17707.08 pertaining to the limited liability company. A
23 certificate of existence shall state all of the following:

24 (1) The limited liability company's name.

25 (2) That the limited liability company was duly formed under
26 the laws of this state and the date of formation.

27 (3) Whether all fees, taxes, and penalties due under this title or
28 other law to the Secretary of State have been paid.

29 (4) Whether the limited liability company's most recent annual
30 report required by Section 17702.09 has been filed by the Secretary
31 of State.

32 (5) Other facts of record in the office of the Secretary of State
33 which are specified by the person requesting the certificate.

34 (b) The Secretary of State, upon request and payment of the
35 requisite fee, shall furnish to any person a certificate of
36 authorization for a foreign limited liability company if the records
37 filed in the office of the Secretary of State show that the Secretary
38 of State has filed a certificate of authority under Section 17708.04
39 and has not revoked the certificate of authority. A certificate of
40 authorization shall state all of the following:

1 (1) The limited liability company's name and any alternate name
2 adopted under subdivision (a) of Section 17708.05 for use in this
3 state.

4 (2) That the limited liability company is authorized to transact
5 business in this state.

6 (3) Whether all fees, taxes, and penalties due under this title or
7 other law to the Secretary of State have been paid.

8 (4) Whether the limited liability company's most recent annual
9 report required by Section 17702.09 has been filed by the Secretary
10 of State.

11 (5) That the Secretary of State has not revoked the limited
12 liability company's certificate of authority.

13 (6) Other facts of record in the office of the Secretary of State
14 that are specified by the person requesting the certificate.

15 (c) Subject to any qualification stated in the certificate, a
16 certificate of existence, or certificate of authorization issued by
17 the Secretary of State is conclusive evidence that the limited
18 liability company is in existence or the foreign limited liability
19 company is authorized to transact business in this state.

20 17702.09. (a) Once every two years, a limited liability
21 company or a foreign limited liability company authorized to
22 transact business in this state shall deliver to the Secretary of State
23 for filing a report that states all of the following:

24 (1) The name of the limited liability company.

25 (2) The street and mailing addresses of the limited liability
26 company's designated office and the name and the street and
27 mailing addresses of its agent for service of process in this state.

28 (3) The street and mailing addresses of its principal office.

29 (4) In the case of a foreign limited liability company, the state
30 or other jurisdiction under whose law the limited liability company
31 is formed and any alternate name adopted under subdivision (a)
32 of Section 17708.05.

33 (b) Information in an annual report under this section shall be
34 current as of the date the report is delivered to the Secretary of
35 State for filing.

36 (c) The first annual report under this section shall be delivered
37 to the Secretary of State within 90 days following the date on which
38 a limited liability company was formed or a foreign limited liability
39 company was authorized to transact business and biannually

1 thereafter during the applicable filing period, on a form prescribed
2 by the Secretary of State.

3 (d) If a biannual report under this section does not contain the
4 information required by subdivision (a), the Secretary of State
5 shall promptly notify the reporting limited liability company or
6 foreign limited liability company and return the report to it for
7 correction. If the report is corrected to contain the information
8 required by subdivision (a) and delivered to the Secretary of State
9 within 30 days after the effective date of the notice, it is timely
10 delivered.

11 (e) If a biannual report under this section contains an address
12 of a designated office or the name or address of an agent for service
13 of process which differs from the information shown in the records
14 of the Secretary of State immediately before the biannual report
15 becomes effective, the differing information in the annual report
16 is considered a statement of change under Section 17701.14.

17 17702.10. An instrument shall be deemed filed, and the date
18 of filing endorsed thereon, upon receipt by the Secretary of State
19 of any instrument accompanied by the fee prescribed by the
20 Secretary of State. The date of filing shall be the date the
21 instrument is received by the Secretary of State unless the
22 instrument is withheld from filing for a period of time not to exceed
23 90 days pursuant to a request by the party submitting it for filing
24 or unless, in the judgment of the Secretary of State, the filing is
25 intended to be coordinated with the filing of some other document
26 that cannot be filed. The Secretary of State shall file a document
27 as of any requested future date not more than 90 days after its
28 receipt, including a Saturday, Sunday, or legal holiday, if that
29 document is received in the Secretary of State's office at least one
30 business day prior to the requested date of filing. Upon receipt and
31 after filing of any document under this title, the Secretary of State
32 may microfilm or reproduce by other techniques any filings or
33 documents and destroy the original filing or document. The
34 microfilm or other reproduction of any document under the
35 provision of this section shall be admissible in any court of law.

Article 3. Relations of Members and Managers to Persons
Dealing with Limited Liability Company

17703.01. (a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this title from imposing liability on a limited liability company because of the person's conduct.

17703.02. (a) A limited liability company on behalf of itself, or a series thereof, may deliver to the Secretary of State for filing a statement of authority.

(1) The statement shall include the name of the limited liability company and the street and mailing addresses of its designated office.

(2) With respect to any position that exists in or with respect to the limited liability company, or a series thereof, the statement may state the authority, or limitations on the authority, of all persons holding the position to do any of the following:

(A) Execute an instrument transferring real property held in the name of the limited liability company or a series thereof of the limited liability company.

(B) Enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company or a series of the limited liability company.

(3) The statement may state the authority, or limitations on the authority, of a specific person to do the following:

(A) Execute an instrument transferring real property held in the name of the limited liability company or a series of the limited liability company.

(B) Enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company or a series of the limited liability company.

(b) To amend or cancel a statement of authority filed by the Secretary of State under subdivision (a) of Section 17702.05, a limited liability company, or a series of the limited liability company, shall deliver to the Secretary of State for filing an amendment or cancellation stating all of the following:

(1) The name of the limited liability company.

(2) The street and mailing addresses of the limited liability company's designated office.

1 (3) The caption of the statement being amended or canceled
2 and the date the statement being affected became effective.

3 (4) The contents of the amendment or a declaration that the
4 statement being affected is canceled.

5 (c) A statement of authority affects only the power of a person
6 to bind a limited liability company, or a series of the limited
7 liability company, to persons that are not members.

8 (d) Subject to subdivision (c) of this section and subdivision (d)
9 of Section 17701.03 and except as otherwise provided in
10 subdivisions (f), (g), and (h), a limitation on the authority of a
11 person or a position contained in an effective statement of authority
12 is not by itself evidence of knowledge or notice of the limitation
13 by any person.

14 (e) Subject to subdivision (c), a grant of authority not pertaining
15 to transfers of real property and contained in an effective statement
16 of authority is conclusive in favor of a person that gives value in
17 reliance on the grant, except to the extent that when the person
18 gives value any of the following apply:

19 (1) The person has knowledge to the contrary.

20 (2) The statement has been canceled or restrictively amended
21 under subdivision (b).

22 (3) A limitation on the grant is contained in another statement
23 of authority that became effective after the statement containing
24 the grant became effective.

25 (f) Subject to subdivision (c), an effective statement of authority
26 that grants authority to transfer real property held in the name of
27 the limited liability company, or a series of the limited liability
28 company, and that is recorded by certified copy in the office for
29 recording transfers of the real property, is conclusive in favor of
30 a person that gives value in reliance on the grant without
31 knowledge to the contrary, except to the extent that when the
32 person gives value any of the following apply:

33 (1) The statement has been canceled or restrictively amended
34 under subdivision (b) and a certified copy of the certificate of
35 cancellation or restrictive amendment has been recorded in the
36 office for recording transfers of the real property.

37 (2) A limitation on the grant is contained in another statement
38 of authority that became effective after the statement containing
39 the grant became effective and a certified copy of the later-effective

1 statement is recorded in the office for recording transfers of the
2 real property.

3 (g) Subject to subdivision (c), if a certified copy of an effective
4 statement containing a limitation on the authority to transfer real
5 property held in the name of a limited liability company, or a series
6 of a limited liability company, is recorded in the office for
7 recording transfers of that real property, all persons are deemed
8 to know of the limitation.

9 (h) Subject to subdivision (i), an effective certificate of
10 dissolution is a cancellation of any filed statement of authority for
11 the purposes of subdivision (f) and is a limitation on authority for
12 the purposes of subdivision (g).

13 (i) A limited liability company, or a series of a limited liability
14 company, may deliver to the Secretary of State for filing and, if
15 appropriate, may record a statement of authority that is designated
16 as a post-dissolution statement of authority. The statement operates
17 as provided in subdivisions (f) and (g).

18 (j) Unless earlier canceled, an effective statement of authority
19 is canceled by operation of law five years after the date on which
20 the statement, or its most recent amendment, becomes effective.
21 This cancellation operates without need for any recording under
22 subdivisions (f) or (g).

23 (k) An effective statement of denial operates as a restrictive
24 amendment under this section and may be recorded by certified
25 copy for the purposes of paragraph (1) of subdivision (f).

26 11703.03. A person named in a filed statement of authority
27 granting that person authority may deliver to the Secretary of State
28 for filing a statement of denial.

29 (a) The statement of denial shall provide the name of the limited
30 liability company and the caption of the statement of authority to
31 which the statement of denial pertains.

32 (b) The statement of denial shall deny the grant of authority.

33 17703.04. (a) All of the following apply to debts, obligations,
34 or other liabilities of a limited liability company, or a series of a
35 limited liability company, whether arising in contract, tort, or
36 otherwise:

37 (1) They are solely the debts, obligations, or other liabilities of
38 the limited liability company, or a series of a limited liability
39 company.

1 (2) They do not become the debts, obligations, or other liabilities
2 of a member or manager or any other series solely by reason of
3 the member acting as a member or manager acting as a manager
4 for the limited liability company or a series of a limited liability
5 company.

6 (b) A member of a limited liability company shall be subject to
7 liability under the common law governing alter ego liability, and
8 shall also be personally liable under a judgment of a court or for
9 any debt, obligation, or liability of the limited liability company,
10 whether that liability or obligation arises in contract, tort, or
11 otherwise, under the same or similar circumstances and to the same
12 extent as a shareholder of a corporation may be personally liable
13 for any debt, obligation, or liability of the corporation; except that
14 the failure to hold meetings of members or managers or the failure
15 to observe formalities pertaining to the calling or conduct of
16 meetings shall not be considered a factor tending to establish that
17 a member or the members have alter ego or personal liability for
18 any debt, obligation, or liability of the limited liability company
19 where the articles of organization or operating agreement do not
20 expressly require the holding of meetings of members or managers.

21 (c) Nothing in this section shall be construed to affect the
22 liability of a member of a limited liability company to third parties
23 for the member's participation in tortious conduct, or pursuant to
24 the terms of a written guarantee or other contractual obligation
25 entered into by the member, other than an operating agreement.

26 (d) A limited liability company or foreign limited liability
27 company shall carry insurance or provide an undertaking to the
28 same extent and in the same amount as is required by any law,
29 rule, or regulation of this state that would be applicable to the
30 limited liability company or foreign limited liability company were
31 it a corporation organized and existing or duly qualified for the
32 transaction of intrastate business under the General Corporation
33 Law.

34 (e) Notwithstanding subdivision (a), a member of a limited
35 liability company may agree to be obligated personally for any or
36 all of the debts, obligations, and liabilities of the limited liability
37 company as long as the agreement to be so obligated is set forth
38 in the certificate of organization or in a written operating agreement
39 that specifically references this subdivision.

Article 4. Relations of Members to Each Other and to Limited
Liability Company

17704.01. (a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the limited liability company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company, or a series thereof, is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited liability company. The organizer acts on behalf of the persons in forming the limited liability company and may be, but need not be, one of the persons.

(c) If a filed certificate of organization contains the statement required by paragraph (3) of subdivision (b) of Section 17702.01, a person becomes an initial member of the limited liability company, or a series of the limited liability company, with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the limited liability company's, or a series' of the limited liability company, initial members.

(d) After formation of a limited liability company, a person becomes a member as follows:

- (1) As provided in the operating agreement.
- (2) As the result of a transaction effective under Article 10 (commencing with Section 17710.01).
- (3) With the consent of all the members.
- (4) If, within 90 consecutive days after the limited liability company ceases to have any members, the last person to have been a member, or the legal representative of that person, designates a person to become a member, and the designated person consents to become a member.

(e) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

(f) A person may be admitted as the sole member without acquiring a membership interest and without making or being obligated to make a contribution to the limited liability company.

1 17704.02. A contribution may consist of tangible or intangible
2 property or other benefit to a limited liability company, or a series
3 of a limited liability company, including money, services
4 performed, promissory notes, other agreements to contribute money
5 or property, and contracts for services to be performed.

6 17704.03. (a) A person's obligation to make a contribution to
7 a limited liability company, or a series of a limited liability
8 company, is not excused by the person's death, disability, or other
9 inability to perform personally. If a person does not make a
10 required contribution, the person or the person's estate is obligated
11 to contribute money equal to the value of the part of the
12 contribution that has not been made, at the option of the limited
13 liability company or a series of a limited liability company.

14 (b) The election described in subdivision (a) shall be in addition
15 to, and not in lieu of, any other rights, including the right to specific
16 performance, that the limited liability company, or a series of a
17 limited liability company, may have under the operating agreement
18 or applicable law.

19 (1) The obligation of a member to make a contribution to a
20 limited liability company may be compromised only by consent
21 of all the members. A conditional obligation of a member to make
22 a contribution to a limited liability company shall not be enforced
23 unless the conditions of the obligation have been satisfied or
24 waived as to or by that member. Conditional obligations include
25 contributions payable upon a discretionary call of a limited liability
26 company before the time the call occurs.

27 (2) The obligation of a member of a series to make a contribution
28 to the series may be compromised only by consent of all the
29 members of that series. A conditional obligation of a member to
30 make a contribution to a series shall not be enforced unless the
31 conditions of the obligation have been satisfied or waived as to or
32 by that member. Conditional obligations include contributions
33 payable upon a discretionary call of that series before the time the
34 call occurs.

35 (3) Paragraph (1) shall not apply to a member's obligation to
36 make a contribution to a series of a limited liability company.

37 (c) A creditor of a limited liability company that extends credit
38 or otherwise acts in reliance on an obligation described in
39 subdivision (a) may enforce the obligation.

1 17704.04. (a) Any distributions made by a limited liability
2 company before its dissolution and winding up shall be in equal
3 shares among members and dissociated members, except to the
4 extent necessary to comply with any transfer effective under
5 Section 17705.02 and any charging order in effect under Section
6 17705.03.

7 (b) A person has a right to a distribution before the dissolution
8 and winding up of a limited liability company only if the limited
9 liability company decides to make an interim distribution. A
10 person's dissociation does not entitle the person to a distribution.

11 (c) A person does not have a right to demand or receive a
12 distribution from a limited liability company in any form other
13 than money. A limited liability company may distribute an asset
14 in kind if each part of the asset is fungible with each other part and
15 each person receives a percentage of the asset equal in value to
16 the person's share of distributions.

17 (d) If a member or transferee becomes entitled to receive a
18 distribution, the member or transferee has the status of, and is
19 entitled to all remedies available to, a creditor of the limited
20 liability company with respect to the distribution.

21 (e) (1) All members of a series shall share equally in any
22 distributions made by the series before its dissolution and winding
23 up.

24 (2) A member of a series has a right to a distribution before the
25 dissolution and winding up of the series as provided in the
26 operating agreement. A decision of the series to make a distribution
27 before the dissolution and winding up of the series is a decision
28 in the ordinary course of activities of the series. A member's
29 dissociation from a series with which the member is associated
30 does not entitle the dissociated member to a distribution from the
31 series.

32 (3) A member of a series does not have a right to demand and
33 receive a distribution from the series in any form other than money.
34 A series may distribute an asset in kind if each member of the
35 series receives a percentage of the asset in proportion to the
36 member's share of distributions from the series.

37 (4) If a member of a series becomes entitled to receive a
38 distribution from the series, the member has the status of, and is
39 entitled to all remedies available to, a creditor of the series with
40 respect to the distribution.

1 (f) Subdivision (a) shall not apply to a distribution made by a
2 series.

3 17704.05. (a) A limited liability company shall not make a
4 distribution if after the distribution either of the following applies:

5 (1) The limited liability company would not be able to pay its
6 debts as they become due in the ordinary course of the limited
7 liability company's activities.

8 (2) The limited liability company's total assets would be less
9 than the sum of its total liabilities plus the amount that would be
10 needed, if the limited liability company were to be dissolved,
11 wound up, and terminated at the time of the distribution, to satisfy
12 the preferential rights upon dissolution, winding up, and
13 termination of members whose preferential rights are superior to
14 those of persons receiving the distribution.

15 (b) A limited liability company may base a determination that
16 a distribution is not prohibited under subdivision (a) on financial
17 statements prepared on the basis of accounting practices and
18 principles that are reasonable in the circumstances or on a fair
19 valuation or other method that is reasonable under the
20 circumstances.

21 (c) Except as otherwise provided in subdivision (f), the effect
22 of a distribution under subdivision (a) is measured as follows:

23 (1) In the case of a distribution by purchase, redemption, or
24 other acquisition of a transferable interest in the limited liability
25 company, as of the date money or other property is transferred or
26 debt incurred by the limited liability company.

27 (2) In all other cases, as of the date the distribution is authorized,
28 if the payment occurs within 120 days after that date, or the
29 payment is made, if the payment occurs more than 120 days after
30 the distribution is authorized.

31 (d) A limited liability company's indebtedness to a member
32 incurred by reason of a distribution made in accordance with this
33 section is at parity with the limited liability company's
34 indebtedness to its general, unsecured creditors.

35 (e) A limited liability company's indebtedness, including
36 indebtedness issued in connection with or as part of a distribution,
37 is not a liability for purposes of subdivision (a) if the terms of the
38 indebtedness provide that payment of principal and interest are
39 made only to the extent that a distribution could be made to
40 members under this section.

1 (f) If indebtedness is issued as a distribution, each payment of
2 principal or interest on the indebtedness is treated as a distribution,
3 the effect of which is measured on the date the payment is made.

4 (g) In subdivision (a), “distribution” does not include amounts
5 constituting reasonable compensation for present or past services
6 or reasonable payments made in the ordinary course of business
7 under a bona fide retirement plan or other benefits program.

8 (h) (1) A series shall not make a distribution to a member of
9 the series to the extent that at the time of the distribution, after
10 giving effect to the distribution, all liabilities of the series, other
11 than liabilities to members of the series on account of their
12 membership interests and liabilities for which the recourse of
13 creditors is limited to specific property of the series, exceed the
14 fair value of the assets of the series, except that the fair value of
15 the property that is subject to a liability for which recourse of
16 creditors is limited shall be included in the assets of the series only
17 to the extent that the fair value of the property exceeds that liability.

18 (2) A member of a series who receives a distribution in violation
19 of paragraph (1) or the operating agreement, and who knew at the
20 time of the distribution that the distribution violated paragraph (1)
21 or the operating agreement, shall be personally liable to that series
22 for the amount of the distribution. A member of a series who
23 receives a distribution in violation of paragraph (1) or the limited
24 liability company agreement, and who did not know at the time
25 of the distribution that the distribution violated paragraph (1) or
26 the operating agreement, shall not be liable for the amount of the
27 distribution.

28 (3) Subdivision (a) shall not apply to a distribution made by a
29 series.

30 17704.06. (a) Except as otherwise provided in subdivision (b)
31 and paragraph (2) of subdivision (h) of Section 17704.05, if a
32 member of a member-managed limited liability company or
33 manager of a manager-managed limited liability company consents
34 to a distribution made in violation of Section 17704.05 and in
35 consenting to the distribution fails to comply with Section
36 17704.09, the member or manager is personally liable to the limited
37 liability company for the amount of the distribution that exceeds
38 the amount that could have been distributed without the violation
39 of Section 17704.05.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subdivision (a) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 17704.05 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 17704.05.

(d) A person against which an action is commenced because the person is liable under subdivision (a) may do all of the following:

(1) Implead any other person that is subject to liability under subdivision (a) and seek to compel contribution from the person.

(2) Implead any person that received a distribution in violation of subdivision (c) and seek to compel contribution from the person in the amount the person received in violation of subdivision (c).

(e) An action under this section is barred if not commenced within four years after the distribution.

17704.07. (a) A limited liability company is a member-managed limited liability company unless the operating agreement does either of the following:

(1) Expressly provides that:

(A) The limited liability company is or will be “manager-managed.”

(B) The limited liability company is or will be “managed by managers.”

(C) Management of the limited liability company is or will be “vested in managers.”

(2) Includes words of similar import.

(b) In a member-managed limited liability company, the following rules apply:

(1) The management and conduct of the limited liability company are vested in the members.

(2) The management and conduct of a series are vested in the members of that series.

1 (3) Paragraph (1) shall not apply to the management and conduct
2 of a series.

3 (4) Each member has equal rights in the management and
4 conduct of the limited liability company's activities.

5 (5) Each member of a series has equal rights in the management
6 and conduct of the series' activities.

7 (6) Paragraph (4) shall not apply to the management and conduct
8 of the series.

9 (7) A difference arising among members as to a matter in the
10 ordinary course of the activities of the limited liability company
11 shall be decided by a majority of the members of the limited
12 liability company.

13 (8) An act outside the ordinary course of the activities of the
14 limited liability company may be undertaken only with the consent
15 of all members.

16 (9) The operating agreement may be amended only with the
17 consent of all members.

18 (c) In a manager-managed limited liability company, the
19 following rules apply:

20 (1) Except as otherwise expressly provided in this title, any
21 matter relating to the activities of the limited liability company is
22 decided exclusively by the managers.

23 (2) Except as otherwise expressly provided in this title, any
24 matter related to the activity of the series is decided exclusively
25 by the managers of the series.

26 (3) Paragraph (1) shall not apply to the activities of a series.

27 (4) Each manager has equal rights in the management and
28 conduct of the activities of the limited liability company.

29 (5) Each manager of a series has equal rights in the management
30 and conduct of the activity of the series.

31 (6) Paragraph (4) shall not apply to the management and conduct
32 of the activity of the series.

33 (7) A difference arising among managers as to a matter in the
34 ordinary course of the activities of the limited liability company
35 may be decided by a majority of the managers of the limited
36 liability company.

37 (8) The consent of all members of the limited liability company
38 is required to do any of the following:

39 (A) Sell, lease, exchange, or otherwise dispose of all, or
40 substantially all, of the limited liability company's property, with

1 or without the goodwill, outside the ordinary course of the limited
2 liability company's activities.

3 (B) Approve a merger or conversion under Article 10
4 (commencing with Section 17710.01).

5 (C) Undertake any other act outside the ordinary course of the
6 limited liability company's activities.

7 (D) Amend the operating agreement.

8 (9) The consent of all members of a series is required to any of
9 the following:

10 (A) Sell, lease, exchange, or afterward dispose of all or
11 substantially all, of the series' property, with or without the
12 goodwill, outside the ordinary course of the series activities.

13 (B) Approve a merger or conversion of the series under Article
14 10 (commencing with Section 17710.01).

15 (C) Undertake any other act outside the ordinary course of the
16 series' activities.

17 (D) Amend the operating agreement with respect to the series.

18 (10) A manager may be chosen at any time by the consent of a
19 majority of the members and remains a manager until a successor
20 has been chosen, unless the manager at an earlier time resigns, is
21 removed, or dies, or, in the case of a manager that is not an
22 individual, terminates. A manager may be removed at any time by
23 the consent of a majority of the members without notice or cause.

24 (11) A manager of a series may be chosen at any time by the
25 consent of a majority of members of that series and remains a
26 manager until a successor has been chosen, unless the manager at
27 an earlier time resigns, is removed, or dies, or in the case of a
28 manager that is not an individual, terminates. A manager of a series
29 may be removed at any time by the consent of a majority of the
30 members of that series without notice or cause.

31 (12) A person need not be a member to be a manager, but the
32 dissociation of a member that is also a manager removes the person
33 as a manager. If a person that is both a manager and a member
34 ceases to be a manager, that cessation does not by itself dissociate
35 the person as a member.

36 (13) A person's ceasing to be a manager does not discharge any
37 debt, obligation, or other liability to the limited liability company
38 or members which the person incurred while a manager.

39 (d) An action requiring the consent of members under this title
40 may be taken without a meeting, and a member may appoint a

1 proxy or other agent to consent or otherwise act for the member
2 by signing an appointing record, personally or by the member's
3 agent.

4 (e) The dissolution of a limited liability company, or a series of
5 a limited liability company, does not affect the applicability of this
6 section. However, a person that wrongfully causes dissolution of
7 the limited liability company loses the right to participate in
8 management as a member and a manager.

9 (f) This title does not entitle a member to remuneration for
10 services performed for a member-managed limited liability
11 company, except for reasonable compensation for services rendered
12 in winding up the activities of a limited liability company.

13 17704.08. (a) A limited liability company, or a series of a
14 limited liability company, shall reimburse for any payment made
15 and indemnify for any debt, obligation, or other liability incurred
16 by a member of a member-managed limited liability company or
17 the manager of a manager-managed limited liability company in
18 the course of the member's or manager's activities on behalf of
19 the limited liability company, if, in making the payment or
20 incurring the debt, obligation, or other liability, the member or
21 manager complied with the duties stated in Sections 17704.05 and
22 17704.09.

23 (b) A limited liability company, or a series of a limited liability
24 company, may purchase and maintain insurance on behalf of a
25 member or manager of the limited liability company against
26 liability asserted against or incurred by the member or manager in
27 that capacity or arising from that status even if, under subdivision
28 (g) of Section 17701.10, the operating agreement could not
29 eliminate or limit the person's liability to the limited liability
30 company for the conduct giving rise to the liability.

31 17704.09. (a) The fiduciary duties that a member owes to a
32 member-managed limited liability company, or a series of a limited
33 liability company, and the other members of the limited liability
34 company, or a series of a limited liability company, are the duties
35 of loyalty and care under subdivisions (b) and (c).

36 (b) A member's duty of loyalty to a limited liability company,
37 or a series of a limited liability company, and the other members
38 is limited to the following:

39 (1) To account to a limited liability company, or a series of a
40 limited liability company, and hold as trustee for it any property,

1 profit, or benefit derived by the member in the conduct and winding
2 up of the activities of a limited liability company, or a series of
3 the limited liability company, or derived from a use by the member
4 of a limited liability company, or a series of a limited liability
5 company, property, including the appropriation of a limited liability
6 company, or a series of a limited liability company, opportunity.

7 (2) To refrain from dealing with a limited liability company, or
8 a series of a limited liability company, in the conduct or winding
9 up of the activities of a limited liability company, or a series of a
10 limited liability company, as or on behalf of a party having an
11 interest adverse to a limited liability company, or a series of a
12 limited liability company.

13 (3) To refrain from competing with a limited liability company,
14 or a series of a limited liability company, in the conduct or winding
15 up of the activities of the limited liability company, or a series of
16 the limited liability company.

17 (c) A member's duty of care to a limited liability company, or
18 a series of a limited liability company, and the other members in
19 the conduct and winding up the activities of the limited liability
20 company, or a series of the limited liability company, is limited
21 to refraining from engaging in grossly negligent or reckless
22 conduct, intentional misconduct, or a knowing violation of law.

23 (d) A member shall discharge the duties to a limited liability
24 company, or a series of a limited liability company, and the other
25 members under this title or under the operating agreement and
26 exercise any rights consistent with the obligation of good faith and
27 fair dealing.

28 (e) A member does not violate a duty or obligation under this
29 chapter or under the operating agreement merely because the
30 member's conduct furthers the member's own interest.

31 (f) In a manager-managed limited liability company, all of the
32 following rules apply:

33 (1) Subdivisions (a), (b), (c), and (e) apply to the manager or
34 managers and not the members.

35 (2) Subdivision (d) applies to the members and managers.

36 (3) A member does not have any fiduciary duty to the limited
37 liability company, or a series of a limited liability company, or to
38 any other member solely by reason of being a member.

39 17704.10. (a) In a member-managed limited liability company,
40 all of the following rules apply:

1 (1) On reasonable notice, a member may inspect and copy during
2 regular business hours, at a reasonable location specified by the
3 limited liability company, any record maintained by the limited
4 liability company regarding the limited liability company's
5 activities, financial condition, and other circumstances, to the
6 extent the information is material to the member's rights and duties
7 under the operating agreement or this title.

8 (2) The limited liability company shall furnish to each member
9 all of the following:

10 (A) Without demand, any information concerning the limited
11 liability company's activities, financial condition, and other
12 circumstances that the limited liability company knows and that
13 is material to the proper exercise of the member's rights and duties
14 under the operating agreement or this title, except to the extent the
15 limited liability company can establish that it reasonably believes
16 the member already knows the information.

17 (B) On demand, any other information concerning the limited
18 liability company's activities, financial condition, and other
19 circumstances, except to the extent the demand or information
20 demanded is unreasonable or otherwise improper under the
21 circumstances.

22 (3) The duty to furnish information under paragraph (2) also
23 applies to each member to the extent the member knows any of
24 the information described in paragraph (2).

25 (b) In a manager-managed limited liability company, all of the
26 following rules apply:

27 (1) The informational rights stated in subdivision (a) and the
28 duty stated in paragraph (3) of subdivision (a) apply to the
29 managers and not the members.

30 (2) During regular business hours and at a reasonable location
31 specified by the limited liability company, a member may obtain
32 from the limited liability company and inspect and copy full
33 information regarding the activities, financial condition, and other
34 circumstances of the limited liability company as is just and
35 reasonable if all of the following apply:

36 (A) The member seeks the information for a purpose material
37 to the member's interest as a member.

38 (B) The member makes a demand in a record received by the
39 limited liability company, describing with reasonable particularity

1 the information sought, and the purpose for seeking the
2 information.

3 (C) The information sought is directly connected to the
4 member's purpose.

5 (3) Within 10 days after receiving a demand pursuant to
6 subparagraph (B) of paragraph (2), the limited liability company
7 shall in a record inform the member that made the demand of all
8 the following:

9 (A) The information that the limited liability company will
10 provide in response to the demand and when and where the limited
11 liability company will provide the information.

12 (B) If the limited liability company declines to provide any
13 demanded information, the limited liability company's reasons for
14 declining.

15 (4) Whenever this title or an operating agreement provides for
16 a member to give or withhold consent to a matter, before the
17 consent is given or withheld, the limited liability company shall,
18 without demand, provide the member with all information that is
19 known to the limited liability company and is material to the
20 member's decision.

21 (c) On 10 days' demand made in a record received by a limited
22 liability company, a dissociated member may have access to
23 information to which the person was entitled while a member if
24 the information pertains to the period during which the person was
25 a member, the person seeks the information in good faith, and the
26 person satisfies the requirements imposed on a member by
27 paragraph (2) of subdivision (b). The limited liability company
28 shall respond to a demand made pursuant to this subdivision in
29 the manner provided in paragraph (3) of subdivision (b).

30 (d) A limited liability company may charge a person that makes
31 a demand under this section the reasonable costs of copying the
32 information, limited to the costs of labor and material.

33 (e) A member or dissociated member may exercise rights under
34 this section through an agent or, in the case of an individual under
35 legal disability, a legal representative. Any restriction or condition
36 imposed by the operating agreement or under subdivision (g)
37 applies both to the agent or legal representative and the member
38 or dissociated member.

39 (f) The rights under this section do not extend to a person as
40 transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subdivision, the limited liability company has the burden of proving reasonableness.

Article 5. Transferable Interests and Rights of Transferees and Creditors

17705.01. A transferable interest is personal property.

17705.02. (a) With respect to a transfer, in whole or in part, of a transferable interest, all of the following apply:

(1) A transfer is permissible.

(2) A transfer does not by itself cause a member's dissociation or a dissolution and winding up of the activities of a limited liability company, or a series of a limited liability company.

(3) Subject to Section 17705.04, a transfer does not entitle the transferee to do any of the following:

(A) Participate in the management or conduct of the activities of a limited liability company or a series of a limited liability company.

(B) Except as otherwise provided in subdivision (c), have access to records or other information concerning the activities of a limited liability company or a series of a limited liability company.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the limited liability company's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company, or a series of a limited liability company, in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

1 (e) A limited liability company, or a series of a limited liability
2 company, need not give effect to a transferee's rights under this
3 section until the limited liability company, or a series of a limited
4 liability company, has notice of the transfer.

5 (f) A transfer of a transferable interest in violation of a restriction
6 on transfer contained in the operating agreement is ineffective as
7 to a person having notice of the restriction at the time of transfer.

8 (g) Except as otherwise provided in paragraph (2) of subdivision
9 (d) of Section 17706.02, when a member transfers a transferable
10 interest, the transferor retains the rights of a member, other than
11 the interest in distributions transferred, and retains all duties and
12 obligations of a member.

13 (h) When a member transfers a transferable interest to a person
14 that becomes a member with respect to the transferred interest, the
15 transferee is liable for the member's obligations under Section
16 17704.03 and subdivision (c) of Section 17704.06 known to the
17 transferee when the transferee becomes a member.

18 17705.03. (a) On application by a judgment creditor of a
19 member or transferee, a court may enter a charging order against
20 the transferable interest of the judgment debtor for the unsatisfied
21 amount of the judgment. A charging order constitutes a lien on a
22 judgment debtor's transferable interest and requires the limited
23 liability company to pay over to the person to which the charging
24 order was issued any distribution that would otherwise be paid to
25 the judgment debtor.

26 (b) To the extent necessary to effectuate the collection of
27 distributions pursuant to a charging order in effect under
28 subdivision (a), the court may do any of the following:

29 (1) Appoint a receiver of the distributions subject to the charging
30 order, with the power to make all inquiries the judgment debtor
31 might have made.

32 (2) Make all other orders necessary to give effect to the charging
33 order.

34 (c) Upon a showing that distributions under a charging order
35 will not pay the judgment debt within a reasonable time, foreclose
36 the lien and order the sale of the transferable interest. The purchaser
37 at the foreclosure sale obtains only the transferable interest, does
38 not thereby become a member, and is subject to Section 17705.02.

39 (d) At any time before foreclosure under subdivision (c), the
40 member or transferee whose transferable interest is subject to a

1 charging order under subdivision (a) may extinguish the charging
2 order by satisfying the judgment and filing a certified copy of the
3 satisfaction with the court that issued the charging order.

4 (e) At any time before foreclosure under subdivision (c), a
5 limited liability company or one or more members whose
6 transferable interests are not subject to the charging order may pay
7 to the judgment creditor the full amount due under the judgment
8 and thereby succeed to the rights of the judgment creditor,
9 including the charging order.

10 (f) This title does not deprive any member or transferee of the
11 benefit of any exemption laws applicable to the member's or
12 transferee's transferable interest.

13 (g) This section provides the exclusive remedy by which a
14 person seeking to enforce a judgment against a member or
15 transferee may, in the capacity of judgment creditor, satisfy the
16 judgment from the judgment debtor's transferable interest.

17 17705.04. (a) If a member dies, the deceased member's
18 personal representative or other legal representative may exercise
19 the rights of a transferee provided in subdivision (c) of Section
20 17705.02 and, for the purposes of settling the estate, the rights of
21 a current member under Section 17704.10.

22 23 Article 6. Member's Dissociation 24

25 17706.01. (a) A person has the power to dissociate as a
26 member at any time, rightfully or wrongfully, by withdrawing as
27 a member by express will pursuant to paragraph (1) of subdivision
28 (a) of Section 17706.02.

29 (b) A person's dissociation from a limited liability company is
30 wrongful only if either of the following apply to the dissociation:

31 (1) The dissociation is in breach of an express provision of the
32 operating agreement.

33 (2) The dissociation occurs before the termination of the limited
34 liability company and any of the following:

35 (A) The person withdraws as a member by express will.

36 (B) The person is expelled as a member by judicial order under
37 paragraph (5) of subdivision (a) of Section 17706.02.

38 (C) The person is dissociated under subparagraph (A) of
39 paragraph (7) of subdivision (a) of Section 17706.02 by becoming
40 a debtor in bankruptcy.

1 (D) In the case of a person that is not a trust other than a business
2 trust, an estate, or an individual, the person is expelled or otherwise
3 dissociated as a member because it dissolved or terminated.

4 (c) A person that wrongfully dissociates as a member is liable
5 to the limited liability company and, subject to Section 17709.01,
6 to the other members for damages caused by the dissociation. The
7 liability is in addition to any other debt, obligation, or other liability
8 of the member to the limited liability company or the other
9 members.

10 17706.02. A person is dissociated as a member from a limited
11 liability company when any of the following occur:

12 (a) The limited liability company has notice of the person's
13 express will to withdraw as a member, but, if the person specified
14 a withdrawal date later than the date the limited liability company
15 had notice, on that later date.

16 (b) An event stated in the operating agreement as causing the
17 person's dissociation to occur.

18 (c) The person is expelled as a member pursuant to the operating
19 agreement.

20 (d) The person is expelled as a member by the unanimous
21 consent of the other members because any of the following applies:

22 (1) It is unlawful to carry on the limited liability company's
23 activities with the person as a member.

24 (2) There has been a transfer of all of the person's transferable
25 interest in the limited liability company, other than either of the
26 following:

27 (A) A transfer for security purposes.

28 (B) A charging order in effect under Section 17705.03 that has
29 not been foreclosed.

30 (3) The person is a corporation and, within 90 days after the
31 limited liability company notifies the person that it will be expelled
32 as a member because the person has filed a certificate of dissolution
33 or the equivalent, its charter has been revoked, or its right to
34 conduct business has been suspended by the jurisdiction of its
35 incorporation and the certificate of dissolution has not been revoked
36 or its charter or right to conduct business has not been reinstated.

37 (4) The person is a limited liability company or partnership that
38 has been dissolved and whose business is being wound up.

1 (e) On application by the limited liability company, the person
2 is expelled as a member by judicial order because the person has
3 done any of the following:

4 (1) Engaged, or is engaging, in wrongful conduct that has
5 adversely and materially affected, or will adversely and materially
6 affect, the limited liability company's activities.

7 (2) Willfully or persistently committed, or is willfully and
8 persistently committing, a material breach of the operating
9 agreement or the person's duties or obligations under Section
10 17704.09.

11 (3) Engaged, or is engaging, in conduct relating to the limited
12 liability company's activities that makes it not reasonably
13 practicable to carry on the activities with the person as a member:

14 (f) In the case of a person who is an individual, if either of the
15 following applies:

16 (1) The person dies.

17 (2) In a member-managed limited liability company if either of
18 the following applies:

19 (A) A guardian or general conservator for the person is
20 appointed.

21 (B) There is a judicial order that the person has otherwise
22 become incapable of performing the person's duties as a member
23 under this title or the operating agreement.

24 (g) In a member-managed limited liability company, the person
25 becomes a debtor in bankruptcy.

26 (h) In the case of a person that is a trust or is acting as a member
27 by virtue of being a trustee of a trust, the trust's entire transferable
28 interest in the limited liability company is distributed but not solely
29 by reason of a substitution of a successor trustee.

30 (i) In the case of a person that is an estate or is acting as a
31 member by virtue of being a personal representative of an estate,
32 the estate's entire transferable interest in the limited liability
33 company is distributed but not solely by reason of a substitution
34 of a successor personal representative.

35 (j) In the case of a member that is not an individual, partnership,
36 limited liability company, corporation, trust, or estate, the
37 termination of the member.

38 (k) The limited liability company participates in a merger under
39 Article 10 (commencing with Section 17710.01), if either of the
40 following applies:

- 1 (1) The limited liability company is not the surviving entity.
2 (2) Otherwise as a result of the merger, the person ceases to be
3 a member.
4 (I) The limited liability company terminates.
5 17706.03. (a) When a person is dissociated as a member of a
6 limited liability company all of the following apply:
7 (1) The person's right to participate as a member in the
8 management and conduct of the limited liability company's
9 activities terminates.
10 (2) If the limited liability company is member-managed, the
11 person's fiduciary duties as a member end with regard to matters
12 arising and events occurring after the person's dissociation.
13 (3) Subject to Section 17705.04 and Article 10 (commencing
14 with Section 17710.01), any transferable interest owned by the
15 person immediately before dissociation in the person's capacity
16 as a member is owned by the person solely as a transferee.
17 (b) A person's dissociation as a member of a limited liability
18 company does not of itself discharge the person from any debt,
19 obligation, or other liability to the limited liability company or the
20 other members that the person incurred while a member.

21
22 Article 7. Dissolution and Winding Up
23

- 24 17707.01. A limited liability company, or a series of a limited
25 liability company, is dissolved, and its activities shall be wound
26 up, upon the happening of the first to occur of the following:
27 (a) On the happening of an event set forth in a written operating
28 agreement or the certificate of organization.
29 (b) By the vote of a majority in interest of the members of the
30 limited liability company, or a series of a limited liability company,
31 or a greater percentage of the voting interests of members as may
32 be specified in the certificate of organization, or a written operating
33 agreement.
34 (c) The passage of 90 consecutive days during which the limited
35 liability company, or a series of a limited liability company, has
36 no members, except on the death of a natural person who is the
37 sole member of a limited liability company, or a series of a limited
38 liability company, the status of the member, including a
39 membership interest, may pass to the heirs, successors, and assigns
40 of the member by will or applicable law. The heir, successor, or

1 assign of the member's interest becomes a substituted member
2 pursuant to Section 17705.02, subject to administration as provided
3 by applicable law, without the permission or consent of the heirs,
4 successors, or assigns or, those administering the estate of the
5 deceased member.

6 (d) Entry of a decree of judicial dissolution pursuant to Section
7 17707.03.

8 17707.02. (a) Notwithstanding any other provision of this title,
9 if a domestic limited liability company has not conducted any
10 business, only a majority of the members, or, if there are no
11 members, the majority of the managers, if any, or if no members
12 or managers, the person or a majority of the persons signing the
13 certificate of organization, may execute and acknowledge a
14 certificate of cancellation of certificate of organization, on a form
15 prescribed by the Secretary of State, stating all of the following:

16 (1) The name of the domestic limited liability company and the
17 Secretary of State's file number.

18 (2) That the certificate of cancellation is being filed within 12
19 months from the date the certificate of organization was filed.

20 (3) That the limited liability company does not have any debts
21 or other liabilities, except as provided in paragraph (4).

22 (4) That a final franchise tax return, as described by Section
23 23332 of the Revenue and Taxation Code, or a final annual tax
24 return, as described by Section 17947 of the Revenue and Taxation
25 Code, has been or will be filed with the Franchise Tax Board, as
26 required under Part 10.2 (commencing with Section 18401) of
27 Division 2 of the Revenue and Taxation Code.

28 (5) That the known assets of the limited liability company
29 remaining after payment of, or adequately providing for, known
30 debts and liabilities have been distributed to the persons entitled
31 thereto or that the limited liability company acquired no known
32 assets, as the case may be.

33 (6) That the limited liability company has not conducted any
34 business from the time of the filing of the certificate of
35 organization.

36 (7) That a majority of the managers or members voted, or, if no
37 managers or members, the person or a majority of the persons
38 signing the certificate of organization, voted to dissolve the limited
39 liability company.

1 (8) If the limited liability company has received payments for
2 interests from investors, that those payments have been returned
3 to those investors.

4 (b) A certificate of cancellation executed and acknowledged
5 pursuant to subdivision (a) shall be filed with the Secretary of State
6 within 12 months from the date that the certificate of organization
7 was filed. The Secretary of State shall notify the Franchise Tax
8 Board of the cancellation.

9 (c) Upon filing a certificate of cancellation pursuant to
10 subdivision (a), a limited liability company shall be cancelled and
11 its powers, rights, and privileges shall cease.

12 (d) A domestic limited liability company that filed certificate
13 of organization on or after January 1, 2004, and that meets all of
14 the conditions described in subdivision (a) may file a certificate
15 of cancellation under this section.

16 17707.03. (a) Pursuant to an action filed by any manager or
17 by any member or members of a limited liability company, a court
18 of competent jurisdiction may decree the dissolution of a limited
19 liability company whenever any of the events specified in
20 subdivision (b) occurs. Pursuant to an action filed by a manager
21 or by any member or members of a series, a court of competent
22 jurisdiction may decree the dissolution of that series whenever any
23 of the events specified in subdivision (b) with respect to that series
24 occurs.

25 (b) (1) It is not reasonably practicable to carry on the business
26 in conformity with the certificate of organization or operating
27 agreement.

28 (2) Dissolution is reasonably necessary for the protection of the
29 rights or interests of the complaining members.

30 (3) The business of the limited liability company, or a series of
31 a limited liability company, has been abandoned.

32 (4) The management of the limited liability company, or a series
33 of a limited liability company, is deadlocked or subject to internal
34 dissention.

35 (5) Those in control of the limited liability company, or a series
36 of a limited liability company, have been guilty of, or have
37 knowingly countenanced persistent and pervasive fraud,
38 mismanagement, or abuse of authority.

39 (c) (1) In any suit for judicial dissolution, the other members
40 may avoid the dissolution of the limited liability company, or a

1 series of a limited liability company, by purchasing for cash the
2 membership interests owned by the members so initiating the
3 proceeding, the “moving parties,” at their fair market value. In
4 fixing the value, the amount of any damages resulting if the
5 initiation of the dissolution is a breach by any moving party or
6 parties of an agreement with the purchasing party or parties,
7 including, without limitation, the operating agreement, may be
8 deducted from the amount payable to the moving party or parties;
9 provided, that no member who sues for dissolution on the grounds
10 set forth in paragraphs (3), (4), or (5) of subdivision (a) shall be
11 liable for damages for breach of contract in bringing that action.

12 (2) If the purchasing parties elect to purchase the membership
13 interests owned by the moving parties, are unable to agree with
14 the moving parties upon the fair market value of the membership
15 interests, and give bond with sufficient security to pay the estimated
16 reasonable expenses, including attorneys’ fees, of the moving
17 parties if the expenses are recoverable under paragraph (3), the
18 court, upon application of the purchasing parties, either in the
19 pending action or in a proceeding initiated in the superior court of
20 the proper county by the purchasing parties, shall stay the winding
21 up and dissolution proceeding and shall proceed to ascertain and
22 fix the fair market value of the membership interests owned by
23 the moving parties.

24 (3) The court shall appoint three disinterested appraisers to
25 appraise the fair market value of the membership interests owned
26 by the moving parties, and shall make an order referring the matter
27 to the appraisers so appointed for the purpose of ascertaining that
28 value. The order shall prescribe the time and manner of producing
29 evidence, if evidence is required. The award of the appraisers or
30 a majority of them, when confirmed by the court, shall be final
31 and conclusive upon all parties. The court shall enter a decree that
32 shall provide in the alternative for winding up and dissolution of
33 the limited liability company, or a series of a limited liability
34 company, unless payment is made for the membership interests
35 within the time specified by the decree. If the purchasing parties
36 do not make payment for the membership interests within the time
37 specified, judgment shall be entered against them and the surety
38 or sureties on the bond for the amount of the expenses, including
39 attorneys’ fees, of the moving parties. Any member aggrieved by
40 the action of the court may appeal therefrom.

1 (4) If the purchasing parties desire to prevent the winding up
2 and dissolution of the limited liability company, or a series of a
3 limited liability company, they shall pay to the moving parties the
4 value of their membership interests ascertained and decreed within
5 the time specified pursuant to this section, or, in the case of an
6 appeal, as fixed on appeal. On receiving that payment or the tender
7 of payment, the moving parties shall transfer their membership
8 interests to the purchasing parties.

9 (5) For the purposes of this section, the valuation date shall be
10 the date upon which the action for judicial dissolution was
11 commenced. However, the court may, upon the hearing of a motion
12 by any party, and for good cause shown, designate some other date
13 as the valuation date.

14 (6) A dismissal of any suit for judicial dissolution by a manager,
15 member, or members shall not affect the other members' rights to
16 avoid dissolution pursuant to this section.

17 17707.04. In the event of a dissolution of a limited liability
18 company all of the following apply:

19 (a) The managers who have not wrongfully dissolved the limited
20 liability company, or a series of a limited liability company, or, if
21 none, the members, or, if none, the person or a majority of the
22 persons signing the certificate of organization, may wind up the
23 affairs of the limited liability company, or a series of the limited
24 liability company, unless the dissolution occurs pursuant to Section
25 17707.03, in which event the winding up shall be conducted in
26 accordance with the decree of dissolution. The persons winding
27 up the affairs of the limited liability company, or a series of a
28 limited liability company, shall give written notice of the
29 commencement of winding up by mail to all known creditors and
30 claimants whose addresses appear on the records of the limited
31 liability company.

32 (b) Upon the petition of any manager or of any member or
33 members, or three or more creditors of a limited liability company,
34 a court of competent jurisdiction may enter a decree ordering the
35 winding up of the limited liability company, or a series of a limited
36 liability company, if that appears necessary for the protection of
37 any parties in interest. The decree shall designate the managers or
38 members, or if good cause is shown, another person or persons,
39 who are to wind up the affairs of the limited liability company, or
40 a series of the limited liability company.

1 (c) Except as otherwise provided in the certificate of
2 organization or a written operating agreement, the persons winding
3 up the affairs of the limited liability company, or a series of a
4 limited liability company, pursuant to this section shall be entitled
5 to reasonable compensation.

6 17707.05. (a) Except as otherwise provided in the certificate
7 of organization or the written operating agreement, after
8 determining that all the known debts and liabilities of a limited
9 liability company, or a series of a limited liability company, in the
10 process of winding up, including, without limitation, debts and
11 liabilities to members who are creditors of the limited liability
12 company, or a series of a limited liability company, have been paid
13 or adequately provided for, the remaining assets shall be distributed
14 among the members according to their respective rights and
15 preferences as follows:

16 (1) To members in satisfaction of liabilities for distributions
17 pursuant to Sections 17704.04, 17704.05 and 17704.06.

18 (2) To members of the limited liability company, or a series of
19 a limited liability company, for the return of their contributions.

20 (3) To members in the proportions in which those members
21 share in distributions.

22 (b) If the winding up is by court proceeding or subject to court
23 supervision, the distribution shall not be made until after the
24 expiration of any period for the presentation of claims that has
25 been prescribed by order of the court.

26 (c) (1) The payment of a debt or liability, whether the
27 whereabouts of the creditor is known or unknown, has been
28 adequately provided for if the payment has been provided for by
29 either of the following means:

30 (A) Payment for the debt or liability has been assumed or
31 guaranteed in good faith by one or more financially responsible
32 persons or by the United States government or any agency of the
33 United States government, and the provision, including the
34 financial responsibility of the person, was determined in good faith
35 and with reasonable care by the members or managers of the
36 limited liability company to be adequate at the time of any
37 distribution of the assets pursuant to this section.

38 (B) The amount of the debt or liability has been deposited as
39 provided in Section 2008 of the General Corporation Law.

(2) This subdivision shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

17707.06. (a) A limited liability company, or a series of a limited liability company, that is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets. A limited liability company, or a series of a limited liability company, shall not continue business except so far as necessary for its winding up.

(b) No action or proceeding to which a limited liability company is a party abates by the dissolution of the limited liability company, or a series of a limited liability company, or by reason of proceedings for its winding up and dissolution.

(c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved limited liability company, or a series of a limited liability company, for the benefit of the persons entitled to those assets upon dissolution and on realization shall be distributed accordingly.

(d) After dissolution of the limited liability company, or a series of a limited liability company, the limited liability company, or a series of a limited liability company, is bound by both of the following:

(1) The act of a person authorized to wind up the affairs of the limited liability company, or a series of a limited liability company, if the act is appropriate for winding up the activities of the limited liability company, or a series of the limited liability company.

(2) The act of a person authorized to act on behalf of the limited liability company, or a series of a limited liability company, if the act would have bound the limited liability company, or a series of a limited liability company, before dissolution, if the other party to the transaction did not have notice of the dissolution.

17707.07. (a) (1) Causes of action against a dissolved limited liability company, or a series of a limited liability company, whether arising before or after the dissolution of the limited liability company, or a series of a limited liability company, may be enforced against any of the following:

(A) Against the dissolved limited liability company, or a series of a limited liability company, to the extent of its undistributed assets, including, without limitation, any insurance assets held by

1 the limited liability company, or a series of a limited liability
2 company, that may be available to satisfy claims.

3 (B) If any of the assets of the dissolved limited liability
4 company, or a series of a limited liability company, have been
5 distributed to members, against members of the dissolved limited
6 liability company, or a series of a limited liability company, to the
7 extent of the limited liability company, or a series of a limited
8 liability company, assets distributed to them upon dissolution of
9 the limited liability company, or a series of a limited liability
10 company.

11 Any member compelled to return distributed assets in an amount
12 that exceeds the sum of the member's pro rata share of the claim
13 and the amount for which the member could otherwise be held
14 liable under Section 17704.05 or 17704.06 may seek contribution
15 for the excess from any other member or manager, up to the sum
16 of that other person's pro rata share of the claim and that other
17 person's liabilities under Section 17704.05 or 17704.06; provided
18 that in case of dissolution of a series, such member may seek
19 contribution as provided in this section only from another member
20 or manager of that series.

21 (2) Except as set forth in subdivision (c), all causes of action
22 against a member of a dissolved limited liability company, or a
23 series of a limited liability company, arising under this section are
24 extinguished unless the claimant commences a proceeding to
25 enforce the cause of action against that member of a dissolved
26 limited liability company, or a series of a limited liability company,
27 prior to the earlier of the following:

28 (A) The expiration of the statute of limitations applicable to the
29 cause of action.

30 (B) Four years after the effective date of the dissolution of the
31 limited liability company or a series of a limited liability company.

32 (3) As a matter of procedure only, and not for purposes of
33 determining liability, members of the dissolved limited liability
34 company, or a series of a limited liability company, may be sued
35 in the name of the limited liability company, or a series of a limited
36 liability company, upon any cause of action against the limited
37 liability company, or a series of a limited liability company. This
38 section does not affect the rights of the limited liability company,
39 or a series of a limited liability company, or its creditors under
40 Sections 17704.05 and 17704.06, or the rights, if any, of creditors

1 under the Uniform Fraudulent Transfer Act, that may arise against
2 the member of a limited liability company, or a series of a limited
3 liability company.

4 (b) Summons or other process against a limited liability
5 company, or a series of a limited liability company, may be served
6 by delivering a copy of a limited liability company to a manager,
7 member, officer, or person having charge of its assets or, if none
8 of these persons can be found, to any agent upon whom process
9 might be served at the time of dissolution. If none of those persons
10 can be found with due diligence and it is so shown by affidavit to
11 the satisfaction of the court, then the court may make an order that
12 summons or other process be served upon the dissolved limited
13 liability company, or a series of a limited liability company, by
14 personally delivering a copy of the summons or other process,
15 together with a copy of the order, to the Secretary of State or an
16 assistant or deputy Secretary of State. Service in this manner is
17 deemed complete on the 10th day after delivery of the process to
18 the Secretary of State. Upon receipt of process and the fee therefor,
19 the Secretary of State shall give notice to the limited liability
20 company as provided in Section 17717.02.

21 (c) Every limited liability company and each series of a limited
22 liability company shall survive and continue to exist indefinitely
23 for the purpose of being sued in any quiet title action. Any
24 judgment rendered in that action shall bind each and all of its
25 members or other persons having any equity or other interest in
26 the limited liability company, or a series of a limited liability
27 company, to the extent of that interest and the action shall have
28 the same force and effect as an action brought under the provisions
29 of Sections 410.50 and 410.60 of the Code of Civil Procedure.
30 Service of summons or other process in any action may be made
31 as provided in Chapter 4 (commencing with Section 413.10) of
32 Title 5 of Part 2 of the Code of Civil Procedure or as provided in
33 subdivision (b).

34 (d) For purposes of Article 4 (commencing with Section 19071)
35 of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation
36 Code, the liability described in this section shall be considered a
37 liability at law within respect to a dissolved limited liability
38 company, or a series of a limited liability company.

39 17707.08. (a) (1) The managers shall cause to be filed in the
40 office of, and on a form prescribed by, the Secretary of State, a

1 certificate of dissolution upon the dissolution of the limited liability
2 company pursuant to Article 7 (commencing with Section
3 17707.01), unless the event causing the dissolution is that specified
4 in subdivision (c) of Section 17707.01, in which case the persons
5 conducting the winding up of the limited liability company's affairs
6 pursuant to Section 17707.04 shall have the obligation to file the
7 certificate of dissolution.

8 (2) The certificate of dissolution shall set forth all of the
9 following:

10 (A) The name of the limited liability company and the Secretary
11 of State's file number.

12 (B) Any other information the persons filing the certificate of
13 dissolution determine to include.

14 (3) If a dissolution pursuant to subdivision (b) of Section
15 17707.01 is made by the vote of all of the members and a statement
16 to that effect is added to the certificate of cancellation of certificate
17 of organization pursuant to subdivision (b), the separate filing of
18 a certificate of dissolution pursuant to this subdivision is not
19 required.

20 (b) (1) The persons who filed the certificate of dissolution shall
21 cause to be filed in the office of, and on a form prescribed by, the
22 Secretary of State, a certificate of cancellation of certificate of
23 organization upon the completion of the winding up of the affairs
24 of the limited liability company pursuant to Section 17707.06,
25 unless the event causing the dissolution is that specified in
26 subdivision (c) of Section 17707.01, in that case the persons
27 conducting the winding up of the limited liability company's affairs
28 pursuant to Section 17707.04 shall have the obligation to file the
29 certificate of cancellation of certificate of organization.

30 (2) The certificate of cancellation of certificate of organization
31 shall set forth all of the following:

32 (A) The name of the limited liability company and the Secretary
33 of State's file number.

34 (B) That a final franchise tax return, as described by Section
35 23332 of the Revenue and Taxation Code, or a final annual tax
36 return, as described by Section 17947 of the Revenue and Taxation
37 Code, has been or will be filed with the Franchise Tax Board, as
38 required under Part 10.2 (commencing with Section 18401) of
39 Division 2 of the Revenue and Taxation Code.

1 (C) Any other information the persons filing the certificate of
2 cancellation of certificate of organization determine to include.

3 (3) The Secretary of State shall notify the Franchise Tax Board
4 of the filing.

5 17707.09. (a) Notwithstanding the filing of a certificate of
6 dissolution, a majority in interest of the members may cause to be
7 filed, in the office of, and on a form prescribed by, the Secretary
8 of State, a certificate of continuation, in any of the following
9 circumstances:

10 (1) The business of the limited liability company is to be
11 continued pursuant to a unanimous vote of the remaining members.

12 (2) The dissolution of the limited liability company was by vote
13 of the members pursuant to subdivision (b) of Section 17707.01
14 and each member who consented to the dissolution has agreed in
15 writing to revoke his or her vote in favor of or consent to the
16 dissolution.

17 (3) The limited liability company was not, in fact, dissolved.

18 (b) The certificate of continuation shall set forth all of the
19 following:

20 (1) The name of the limited liability company and the Secretary
21 of State's file number.

22 (2) The grounds provided by subdivision (a) that are the basis
23 for filing the certificate of continuation.

24 (3) Upon the filing of a certificate of continuation, the certificate
25 of dissolution shall be of no effect from the time of the filing of
26 the certificate of dissolution.

27 17707.10. (a) A domestic limited liability company whose
28 certificate of organization has been canceled pursuant to Section
29 17707.08 may be revived by filing with, and on a form prescribed
30 by, the Secretary of State, a certificate of revival. The certificate
31 of revival shall be accompanied by written confirmation by the
32 Franchise Tax Board that all of the following have been paid to
33 the Franchise Tax Board:

34 (1) The annual tax due under Section 23038 of the Revenue and
35 Taxation Code.

36 (2) The annual fee due under Section 17943 of the Revenue and
37 Taxation Code.

38 (3) All penalties and interest for each year for which the
39 domestic limited liability company failed to pay the annual tax,

1 including each year between the cancellation of its certificate of
2 organization and its revival.

3 (b) The certificate of revival shall set forth all of the following:

4 (1) The name of the limited liability company at the time its
5 certificate of organization was cancelled, and if the name is not
6 available at the time of revival, the name under which the limited
7 liability company is to be revived.

8 (2) The date of filing of the original certificate of organization.

9 (3) The address of the limited liability company's designated
10 office.

11 (4) The name and address of the initial agent for service of
12 process in accordance with paragraph (1) of subdivision (a) of
13 Section 17701.13.

14 (5) A statement that the certificate of revival is filed by one or
15 more managers of a manager-managed limited liability company
16 or one or more members of a member-managed limited liability
17 company authorized to execute and file the certificate of revival
18 to revive the limited liability company.

19 (6) The Secretary of State's file number for the original limited
20 liability company.

21 (7) The name and address of each manager of a
22 manager-managed limited liability company or each member of a
23 member-managed limited liability company.

24 (8) Any other matters the managers or members executing the
25 certificate of revival determine to include in the certificate.

26 (c) The certificate of revival should be deemed to be an
27 amendment to the certificate of organization, and the limited
28 liability company shall not be required to take any further action
29 to amend its certificate of organization pursuant to Section
30 17702.02 with respect to the matter set forth in the certificate of
31 revival.

32 (d) Upon the filing of the certificate of revival, the limited
33 liability company shall be revived with the same force and effect
34 as if the certificate of organization had not been canceled pursuant
35 to Section 17707.08. The revival shall validate all contracts, acts,
36 matters, and things made, done, and performed by the limited
37 liability company, its managers, members, employees, and agents
38 following the time its certificate of organization was canceled
39 pursuant to Section 17702.08 with the same force and effect and
40 all intents and purposes as if the certificate of organization had

1 remained in full force and effect. This provision shall apply
2 provided that third parties are relying on the acts of the limited
3 liability company, its managers, members, employees, and agents.
4 All real and personal property, and all rights and interests, that
5 belong to a limited liability company at the time its certificate of
6 organization was canceled pursuant to Section 17707.08 or that
7 were acquired by the limited liability company following the
8 cancellation of the certificate of organization, that were not
9 disposed of prior to the time of its revival, shall be vested in the
10 limited liability company after its revival as fully as if they were
11 held by the limited liability company at, and during the time after,
12 as the case may be, the time the certificate of organization was
13 cancelled. After its revival, the limited liability company and its
14 managers or members shall have all of the same liability for
15 contracts, acts, matters, and things made, done, or performed in
16 the limited liability company's name and on behalf of its managers,
17 members, employees, and agents, as the limited liability company
18 and its members would have had if the limited liability company's
19 certificate of organization had at all times remained in full force
20 and effect.

21 17707.11. (a) A series that has been dissolved may be revived
22 upon compliance with all of the following conditions:

23 (1) The affirmative vote or consent shall have been obtained
24 from the members or other persons of the series entitled to vote
25 or consent at the time that is either of the following:

26 (A) Required for revival under its operating agreement.

27 (B) If its operating agreement does not state the vote or consent
28 required for reinstatement of that series, sufficient for dissolution
29 of a series under this title, or such greater or lesser vote or consent
30 as is required for dissolution of a series under its operating
31 agreement.

32 (2) The members and other persons of a series having authority
33 under the title and under the operating agreement to bring about
34 or prevent dissolution of a series shall not have, before or at the
35 time of the vote or consent required by paragraph (1), voted against
36 revival of a series or delivered to the limited liability company
37 their written objection to revival of a series.

38 (3) In the case of a series dissolved in a judicial proceeding
39 pursuant to Section 17707.03 initiated by one or more of the
40 members of the series, the affirmative vote or consent of each

1 member described in paragraph (1) shall have been obtained and
2 shall be included in the vote or consent required by paragraph (1).

3 (b) To the extent that an operating agreement provides for the
4 voting rights of members or other persons of a series, for the calling
5 of meetings, for notices of meetings, for consents and actions of
6 members and other persons of the series without a meeting, for
7 establishing a record date for meetings, or for other matters
8 concerning the voting or consent of members and other persons
9 of the series, those provisions shall govern the vote or consent
10 required by paragraph (1) of subdivision (a) with respect to the
11 series and the vote or objection of members and other persons of
12 the series provided for in paragraph (2) of subdivision (a) with
13 respect to the series.

14 (c) The revival shall validate all contracts, acts, matters, and
15 things made, done, and performed by the series, its managers,
16 members, employees, and agents following the time its dissolution
17 with the same force and effect and all intents and purposes as if
18 the series had remained in full force and effect. This subdivision
19 shall apply provided that third parties are relying on the acts of the
20 limited liability company, its managers, members, employees, and
21 agents. All real and personal property, and all rights and interests,
22 that belong to a series at the time its dissolution or that were
23 acquired by the series following the dissolution, that were not
24 disposed of prior to the time of its revival, shall be vested in the
25 series after its revival as fully as if they were held by the series at,
26 and during the time after, as the case may be, the time the
27 dissolution. After its revival, the series and its managers or
28 members shall have all of the same liability for contracts, acts,
29 matters, and things made, done, or performed in the series' name
30 and on behalf of its managers, members, employees, and agents,
31 as the series and its members would have had if the series had at
32 all times remained in full force and effect.

33
34 Article 8. Foreign Limited Liability Companies
35

36 17708.01. (a) The law of the state or other jurisdiction under
37 which a foreign limited liability company is formed governs all
38 of the following:

39 (1) The organization of the limited liability company, its internal
40 affairs, and the authority of its members and managers.

(2) The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the limited liability company or a series of the limited liability company.

(b) A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the limited liability company is formed and the law of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company shall not engage in or exercise in this state.

17708.02. (a) A foreign limited liability company, or a series of a limited liability company, may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall state all of the following:

(1) The name of the limited liability company and, if the name does not comply with Section 17701.08, an alternate name adopted pursuant to subdivision (a) of Section 17708.05.

(2) The name of the state or other jurisdiction under whose law the limited liability company is formed.

(3) The street and mailing addresses of the limited liability company's principal office and, if the law of the jurisdiction under which the limited liability company is formed requires the limited liability company to maintain an office in that jurisdiction, the street and mailing addresses of the required office.

(4) The name, street, and mailing addresses of the limited liability company's initial agent for service of process in this state.

(5) If the foreign limited liability company is a low-profit limited liability company, the foreign limited liability company shall comply with Section 17701.08.

(b) A foreign limited liability company shall deliver with a completed application under subdivision (a) a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the limited liability company's publicly filed records in the state or other jurisdiction under whose law the limited liability company is formed.

(c) The Secretary of State shall include with instructional materials, provided in conjunction with registration under subdivision (a), a notice that filing the registration will obligate

1 the limited liability company to pay an annual tax to the Franchise
2 Tax Board pursuant to Section 17941 of the Revenue and Taxation
3 Code. That notice shall be updated annually to specify the dollar
4 amount of the tax.

5 (d) If a foreign limited liability company establishes or provides
6 for the establishment of one or more series of assets, that fact shall
7 be stated on the statement of foreign qualification. In addition, the
8 foreign limited liability company shall state on the statement of
9 foreign qualification whether the debts, liabilities, and obligations
10 incurred, contracted for or otherwise existing with respect to a
11 series, if any, shall be enforceable against the assets of that series
12 only, and not against the assets of the foreign limited liability
13 company generally or any other series of the foreign limited
14 liability company, and whether any of the debts, liabilities,
15 obligations, and expenses incurred, contracted for, or otherwise
16 existing with respect to the foreign limited liability company
17 generally or any other series of the foreign limited liability
18 company shall be enforceable against the assets of that series

19 17708.03. (a) A foreign limited liability company that enters
20 into repeated and successive transactions of business in this state,
21 other than in interstate or foreign commerce, is considered to be
22 transacting business in this state within the meaning of this article.

23 (b) Without excluding other activities that may not be considered
24 to be transacting business in this state within the meaning of this
25 article, activities of a foreign limited liability company, or a series
26 of the foreign limited liability company, that do not constitute
27 transacting business in this state include all of the following:

28 (1) Maintaining or defending any action or suit or any
29 administrative or arbitration proceeding, or effecting the settlement
30 of those, or the settlement of claims or disputes.

31 (2) Carrying on any activity concerning its internal affairs,
32 including holding meetings of its members or managers.

33 (3) Maintaining accounts in financial institutions.

34 (4) Maintaining offices or agencies for the transfer, exchange,
35 and registration of the limited liability company's own securities
36 or maintaining trustees or depositories with respect to those
37 securities.

38 (5) Selling through independent contractors.

1 (6) Soliciting or procuring orders, whether by mail or electronic
2 means or through employees or agents or otherwise, if the orders
3 require acceptance outside this state before they become contracts.

4 (7) Creating or acquiring indebtedness, evidences of
5 indebtedness, mortgages, liens, or security interests in real or
6 personal property.

7 (8) Securing or collecting debts or enforcing mortgages or other
8 security interests in property securing the debts and holding,
9 protecting, or maintaining property so acquired.

10 (9) Conducting an isolated transaction that is completed within
11 180 days and is not in the course of a number of repeated
12 transactions of a like nature.

13 (10) Transacting business in interstate commerce.

14 (c) Without excluding other activities that may not be considered
15 to be transacting business in this state within the meaning of this
16 article, a foreign limited liability company, or a series of a foreign
17 limited liability company, shall not be considered to be transacting
18 that business in this state merely because its subsidiary transacts
19 that business in this state, or merely because of its status as any
20 one or more of the following:

21 (1) A shareholder of a domestic corporation.

22 (2) A shareholder of a foreign corporation transacting intrastate
23 business.

24 (3) A limited partner of a foreign limited partnership transacting
25 intrastate business.

26 (4) A limited partner of a domestic limited partnership.

27 (5) A member or manager of a foreign limited liability company
28 transacting intrastate business.

29 (6) A member or manager of a domestic limited liability
30 company.

31 (d) A person shall not be deemed to be transacting business in
32 this state within the meaning of this article merely because of its
33 status as a member or manager of a domestic limited liability
34 company, or a series of a domestic limited liability company, or
35 a foreign limited liability company registered to transact intrastate
36 business in this state.

37 (e) This section does not apply in determining the contacts or
38 activities that may subject a foreign limited liability company, or
39 a series of a foreign limited liability company, to service of process,
40 taxation, or regulation under law of this state other than this article.

1 17708.04. Unless the Secretary of State determines that an
2 application for a certificate of authority does not comply with the
3 filing requirements of this article, the Secretary of State, upon
4 payment of all required filing fees, shall file the application of a
5 foreign limited liability company, prepare, sign, and file a
6 certificate of authority to transact business in this state, and send
7 a copy of the filed certificate, together with a receipt for the fees
8 paid, to the limited liability company or its representative.

9 17708.05. (a) A foreign limited liability company whose name
10 does not comply with Section 17701.08 shall not obtain a certificate
11 of authority until it adopts, for the purpose of transacting business
12 in this state, an alternate name that complies with Section 17701.08.
13 A foreign limited liability company that adopts an alternate name
14 under this subdivision and obtains a certificate of authority with
15 the alternate name need not comply with fictitious or assumed
16 name statutes. After obtaining a certificate of authority with an
17 alternate name, a foreign limited liability company shall transact
18 business in this state under the alternate name unless the limited
19 liability company is authorized under fictitious or assumed name
20 statutes to transact business in this state under another name.

21 (b) If a foreign limited liability company, or a series of a foreign
22 limited liability company authorized to transact business in this
23 state changes its name to one that does not comply with Section
24 17701.08, it shall not thereafter transact business in this state until
25 it complies with subdivision (a) and obtains an amended certificate
26 of authority.

27 17708.06. (a) A certificate of authority of a foreign limited
28 liability company to transact business in this state may be revoked
29 by the Secretary of State in the manner provided in subdivisions
30 (b) and (c) if the limited liability company does not do any of the
31 following:

32 (1) Pay, within 60 days after the due date, any fee, tax, or penalty
33 due to the Secretary of State under this article or law other than
34 this article.

35 (2) Deliver, within 60 days after the due date, its annual report
36 required under Section 17702.09.

37 (3) Appoint and maintain an agent for service of process as
38 required by subdivision (b) of Section 17701.13.

(4) Deliver, for filing, a statement of a change under Section 17701.14 within 30 days after a change has occurred in the name or address of the agent.

(b) To revoke a certificate of authority of a foreign limited liability company, the Secretary of State shall prepare, sign, and file a notice of revocation and send a copy to the limited liability company's agent for service of process in this state, or if the limited liability company does not appoint and maintain a proper agent in this state, to the limited liability company's designated office. The notice shall state all of the following:

(1) The revocation's effective date, that shall be at least 60 days after the date the Secretary of State sends the copy.

(2) The grounds for revocation under subdivision (a).

(c) The authority of a foreign limited liability company and all series of a foreign limited liability company, to transact business in this state ceases on the effective date of the notice of revocation unless before that date the limited liability company cures each ground for revocation stated in the notice filed under subdivision (b). If the limited liability company cures each ground, the Secretary of State shall file a record stating that fact.

17708.07. To cancel its certificate of authority to transact business in this state, a foreign limited liability company shall deliver to the Secretary of State for filing a notice of cancellation stating the name of the limited liability company and that the limited liability company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

17708.08. (a) A foreign limited liability company, or a series of a foreign limited liability company, transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(b) The failure of a foreign limited liability company, or a series of a foreign limited liability company, to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the limited liability company or prevent the limited liability company from defending an action or proceeding in this state.

(c) A member or manager of a foreign limited liability company, or a series of a foreign limited liability company, is not liable for the debts, obligations, or other liabilities of the limited liability

1 company solely because the limited liability company transacted
2 business in this state without a certificate of authority.

3 (d) If a foreign limited liability company, or a series of a foreign
4 limited liability company, transacts business in this state without
5 a certificate of authority or cancels its certificate of authority, it
6 shall be deemed to have appointed the Secretary of State as its
7 agent for service of process for rights of action arising out of the
8 transaction of business in this state.

9 17708.09. The Attorney General may maintain an action to
10 enjoin a foreign limited liability company from transacting business
11 in this state in violation of this title.

12
13 Article 9. Actions by Members
14

15 17709.01. Any member of a series, foreign, or domestic limited
16 liability company may bring a class action on behalf of all or a
17 class of members to enforce any claim common to those members
18 and any of those actions shall be governed by the law governing
19 class actions generally, provided that in order to maintain the class
20 action there shall be no requirement that the class be so numerous
21 that joinder of all members of the class is impracticable.

22 17709.02. (a) No action shall be instituted or maintained in
23 right of any domestic or foreign limited liability company by any
24 member of the limited liability company, or a series of a limited
25 liability company, unless both of the following conditions exist:

26 (1) The plaintiff alleges in the complaint that the plaintiff was
27 a member of record, or beneficiary, at the time of the transaction
28 or any part of the transaction of which the plaintiff complains, or
29 that the plaintiff's interest later devolved upon the plaintiff by
30 operation of law from a member who was a member at the time
31 of the transaction or any part of the transaction complained of.
32 Any member who does not meet these requirements may
33 nevertheless be allowed in the discretion of the court to maintain
34 the action on a preliminary showing to and determination by the
35 court, by motion and after a hearing at which the court shall
36 consider any evidence, by affidavit or testimony, as it deems
37 material, of all of the following:

38 (A) There is a strong prima facie case in favor of the claim
39 asserted on behalf of the limited liability company or a series of a
40 limited liability company.

1 (B) No other similar action has been or is likely to be instituted.

2 (C) The plaintiff acquired the interest before there was disclosure
3 to the public or to the plaintiff of the wrongdoing of which plaintiff
4 complains.

5 (D) Unless the action can be maintained, the defendant may
6 retain a gain derived from defendant's willful breach of a fiduciary
7 duty.

8 (E) The requested relief will not result in unjust enrichment of
9 the limited liability company or any member of the limited liability
10 company or a series of a limited liability company.

11 (2) The plaintiff alleges in the complaint with particularity the
12 plaintiff's efforts to secure from the managers the action the
13 plaintiff desires or the reasons for not making that effort, and
14 alleges further that the plaintiff has either informed the limited
15 liability company, or a series of a limited liability company, or the
16 managers in writing of the ultimate facts of each cause of action
17 against each defendant or delivered to the limited liability company
18 or the managers a true copy of the complaint that the plaintiff
19 proposes to file.

20 (b) In any action referred to in subdivision (a), at any time within
21 30 days after service of summons upon the limited liability
22 company or upon any defendant who is a manager of the limited
23 liability company, or a series of the limited liability company, or
24 held that position at the time of the acts complained of, the limited
25 liability company or the defendant may move the court for an
26 order, upon notice and hearing, requiring the plaintiff to furnish
27 security as hereinafter provided. The motion shall be based upon
28 one or both of the following grounds:

29 (1) That there is no reasonable possibility that the prosecution
30 of the cause of action alleged in the complaint against the moving
31 party will benefit the limited liability company, or a series of the
32 limited liability company, or its members.

33 (2) That the moving party, if other than the limited liability
34 company, or a series of the limited liability company, did not
35 participate in the transaction complained of in any capacity. The
36 court, on application of the limited liability company, or a series
37 of the limited liability company, or any defendant, may, for good
38 cause shown, extend the 30-day period for an additional period
39 not exceeding 60 days.

1 (c) (1) At the hearing upon any motion pursuant to subdivision
2 (b), the court shall consider evidence, written or oral, by witnesses
3 or affidavit, as may be material to the ground upon which the
4 motion is based, or to a determination of the probable reasonable
5 expenses, including attorneys' fees, of the limited liability
6 company, or a series of the limited liability company, and the
7 moving party that will be incurred in the defense of the action.

8 (2) If the court determines, after hearing the evidence adduced
9 by the parties, that the moving party has established a probability
10 in support of any of the grounds upon which the motion is based,
11 the court shall fix the nature and amount of security, not to exceed
12 fifty thousand dollars (\$50,000), to be furnished by the plaintiff
13 for reasonable expenses, including attorney's fees, that may be
14 incurred by the moving party and the limited liability company in
15 connection with the action. A ruling by the court on the motion
16 shall not be a determination of any issue in the action or of the
17 merits of the action. The amount of the security may thereafter be
18 increased or decreased in the discretion of the court upon a showing
19 that the security provided has or may become inadequate or is
20 excessive, but the court shall not in any event increase the total
21 amount of the security beyond fifty thousand dollars (\$50,000) in
22 the aggregate for all defendants. If the court, upon a motion, makes
23 a determination that security shall be furnished by the plaintiff as
24 to any one or more defendants, the action shall be dismissed as to
25 that defendant or those defendants, unless the security required by
26 the court has been furnished within any reasonable time as shall
27 be fixed by the court. The limited liability company and the moving
28 party shall have recourse to the security in the amount that the
29 court determines upon the termination of the action.

30 (d) If the plaintiff, either before or after a motion is made
31 pursuant to subdivision (b), or any order or determination pursuant
32 to that motion, posts good and sufficient bond or bonds in the
33 aggregate amount of fifty thousand dollars (\$50,000) to secure the
34 reasonable expenses of the parties entitled to make the motion, the
35 plaintiff shall be deemed to have complied with the requirements
36 of this section and with any order for security made pursuant to
37 this section. Any motion then pending shall be dismissed and no
38 further or additional bond or other security shall be required.

39 (e) If a motion is filed pursuant to subdivision (b), no pleadings
40 need be filed by the limited liability company or any other

1 defendant and the prosecution of the action shall be stayed until
2 10 days after the motion has been disposed of.

3 17709.03. (a) If a limited liability company is named as or
4 made a party in a derivative proceeding, the limited liability
5 company may appoint a special litigation committee to investigate
6 the claims asserted in the proceeding and determine whether
7 pursuing the action is in the best interests of the limited liability
8 company. If the limited liability company appoints a special
9 litigation committee, on motion by the committee made in the
10 name of the limited liability company, except for good cause
11 shown, the court shall stay discovery for the time reasonably
12 necessary to permit the committee to make its investigation. This
13 subdivision does not prevent the court from enforcing a person's
14 right to information under Section 17704.10 or, for good cause
15 shown, granting extraordinary relief in the form of a temporary
16 restraining order or preliminary injunction.

17 (b) A special litigation committee may be composed of one or
18 more disinterested and independent individuals, who may be
19 members.

20 (c) A special litigation committee may be appointed as follows:

21 (1) In a member-managed limited liability company as follows:

22 (A) By the consent of a majority of the members not named as
23 defendants or plaintiffs in the proceeding.

24 (B) If all members are named as defendants or plaintiffs in the
25 proceeding, by a majority of the members named as defendants.

26 (2) In a manager-managed limited liability company as follows:

27 (A) By a majority of the managers not named as defendants or
28 plaintiffs in the proceeding.

29 (B) If all managers are named as defendants or plaintiffs in the
30 proceeding, by a majority of the managers named as defendants.

31 (d) After appropriate investigation, a special litigation committee
32 may determine that it is in the best interests of the limited liability
33 company that the proceeding do any of the following:

34 (1) Continue under the control of the plaintiff.

35 (2) Continue under the control of the committee.

36 (3) Be settled on terms approved by the committee.

37 (4) Be dismissed.

38 (e) After making a determination under subdivision (d), a special
39 litigation committee shall file with the court a statement of its
40 determination and its report supporting its determination, giving

1 notice to the plaintiff. The court shall determine whether the
2 members of the committee were disinterested and independent and
3 whether the committee conducted its investigation and made its
4 recommendation in good faith, independently, and with reasonable
5 care, with the committee having the burden of proof. If the court
6 finds that the members of the committee were disinterested and
7 independent and that the committee acted in good faith,
8 independently, and with reasonable care, the court shall enforce
9 the determination of the committee. Otherwise, the court shall
10 dissolve the stay of discovery entered under subdivision (a) and
11 allow the action to proceed under the direction of the plaintiff.
12

13 Article 10. Merger and Conversion
14

15 17710.01. For purposes of this article, the following definitions
16 apply:

17 (a) “Converted entity” means the other business entity or foreign
18 other business entity or foreign limited liability company that
19 results from a conversion of a domestic limited liability company
20 under this title.

21 (b) “Converted limited liability company” means a domestic
22 limited liability company that results from a conversion of an other
23 business entity or a foreign other business entity or a foreign
24 limited liability company pursuant to Section 17710.08.

25 (c) “Converting limited liability company” means a domestic
26 limited liability company that converts to an other business entity
27 or a foreign other business entity or a foreign limited liability
28 company pursuant to this title.

29 (d) “Converting entity” means an other business entity or a
30 foreign other business entity or a foreign limited liability company
31 that converts to a domestic limited liability company pursuant to
32 Section 17710.08.

33 (e) “Constituent corporation” means a corporation that is merged
34 with or into one or more limited liability companies or other
35 business entities and that includes a surviving corporation.

36 (f) “Constituent limited liability company” means a limited
37 liability company that is merged with or into one or more other
38 limited liability companies or other business entities and that
39 includes a surviving limited liability company.

(g) “Constituent other business entity” means an other business entity that is merged with or into one or more limited liability companies and that includes a surviving other business entity.

(h) “Disappearing limited liability company” means a constituent limited liability company that is not the surviving limited liability company.

(i) “Disappearing other business entity” means a constituent other business entity that is not the surviving other business entity.

(j) “Foreign other business entity” means an other business entity formed under the laws of any state other than this state or under the laws of a foreign country.

(k) “Other business entity” means a corporation, general liability company, limited membership, business trust, real estate investment trust, or unincorporated association, other than a nonprofit association, but excludes a limited liability company.

(l) “Surviving limited liability company” means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(m) “Surviving other business entity” means an other business entity into which one or more limited liability companies are merged.

17710.02. (a) A limited liability company may be converted into an other business entity or a foreign other business entity or a foreign limited liability company pursuant to this article if both of the following apply:

(1) Pursuant to a conversion into a domestic or foreign liability company or limited liability company or into a foreign limited liability company, each of the members of the converting limited liability company receives a percentage interest in the profits and capital of the converted entity equal to that member’s percentage interest in profits and capital of the converting limited liability company as of the effective time of the conversion.

(2) Pursuant to a conversion into an other business entity or foreign other business entity not specified in paragraph (1), both of the following occur:

(A) Each limited liability company interest of the same class is treated equally with respect to any distribution of cash, property, rights, interests, or securities of the converted entity, unless all limited members of the class consent.

1 (B) The nonredeemable limited liability company interests of
2 the converting limited liability company are converted only into
3 nonredeemable interests or securities of the converted entity, unless
4 all holders of the unredeemable interests consent.

5 (b) The conversion of a limited liability company to an other
6 business entity or a foreign other business entity or a foreign
7 limited liability company may be effected only if both of the
8 following conditions are satisfied:

9 (1) The law under which the converted entity will exist expressly
10 permits the formation of that entity pursuant to a conversion.

11 (2) The limited liability company complies with all other
12 requirements of any other law that applies to conversion to the
13 converted entity.

14 17710.03. (a) A limited liability company that desires to
15 convert to an other business entity or a foreign other business entity
16 or a foreign limited liability company shall approve a plan of
17 conversion. The plan of conversion shall state all of the following:

18 (1) The terms and conditions of the conversion.

19 (2) The place of the organization of the converted entity and of
20 the converting limited liability company and the name of the
21 converted entity after conversion.

22 (3) The manner of converting the membership interests of each
23 of the members into shares of, securities of, or interests in, the
24 converted entity.

25 (4) The provisions of the governing documents for the converted
26 entity, including the limited liability company certificate of
27 organization and operating agreement, or articles or certificate of
28 incorporation if the converted entity is a corporation, to which the
29 holders of interests in the converted entity are to be bound.

30 (5) Any other details or provisions that are required by the laws
31 under which the converted entity is organized, or that are desired
32 by the parties.

33 (b) (1) The plan of conversion shall be approved by all
34 managers and a majority in interest of each class of membership
35 interest or if there are no managers, a majority in interest of each
36 class of membership of the converting limited liability company,
37 unless a greater or lesser approval is required by the operating
38 agreement of the converting limited liability company.

39 (2) However, if the members of the limited liability company
40 would become personally liable for any obligations of the

1 converted entity as a result of the conversion, the plan of
2 conversion shall be approved by all of the limited members of the
3 converting limited liability company, unless the plan of conversion
4 provides that all members will have dissenters' rights as provided
5 in Article 11 (commencing with Section 17711.01).

6 (c) Upon the effectiveness of the conversion, all members of
7 the converting limited liability company, except those that exercise
8 dissenters' rights as provided in Article 11 (commencing with
9 Section 17711.01), shall be deemed parties to any governing
10 documents for the converted entity adopted as part of the plan of
11 conversion, regardless of whether or not the member has executed
12 the plan of conversion or the governing documents for the
13 converted entity. Any adoption of governing documents made
14 pursuant to the conversion shall be effective at the effective time
15 or date of the conversion.

16 (d) Notwithstanding its prior approval, a plan of conversion
17 may be amended before the conversion takes effect if the
18 amendment is approved by all managers and a majority of the
19 members or if there are no managers, a majority of the members
20 of the converting limited liability company and, if the amendment
21 changes any of the principal terms of the plan of conversion, the
22 amendment is approved by the managers and members of the
23 converting limited liability company in the same manner and to
24 the same extent as required for the approval of the original plan
25 of conversion.

26 (e) The managers by unanimous approval and the members of
27 a converting limited liability company may, by majority approval
28 at any time before the conversion is effective, in their discretion,
29 abandon a conversion, without further approval by the managers
30 or members, subject to the contractual rights of third parties other
31 than managers or members.

32 (f) The converted entity shall keep the plan of conversion at the
33 principal place of business of the converted entity if the converted
34 entity is a domestic liability company or foreign other business
35 entity, at the principal executive office of, or registrar or transfer
36 agent of, the converted entity, if the converted entity is a domestic
37 corporation, or at the office where records are to be kept pursuant
38 to Section 17701.13 if the converted entity is a domestic limited
39 liability company. Upon the request of a member of a converting
40 limited liability company, the authorized person on behalf of the

1 converted entity shall promptly deliver to the member or the holder
2 of shares, interests, or other securities, at the expense of the
3 converted entity, a copy of the plan of conversion. A waiver by a
4 member of the rights provided in this subdivision shall be
5 unenforceable.

6 17710.04. (a) A conversion into an other business entity or a
7 foreign other business entity or a foreign limited liability company
8 shall become effective upon the earliest date that all of the
9 following occur:

10 (1) The plan of conversion is approved by the members of the
11 converting limited liability company, as provided in Section
12 17710.03.

13 (2) All documents required by law to create the converted entity
14 are filed, which documents shall also contain a statement of
15 conversion, if required under Section 17710.06.

16 (3) The effective date, if set forth in the plan of conversion,
17 occurs.

18 (b) A copy of the statement of liability company authority or
19 certificate of organization complying with Section 17710.06, if
20 applicable, duly certified by the Secretary of State, is conclusive
21 evidence of the conversion of the limited liability company.

22 17710.05. (a) The conversion of a limited liability company
23 into a foreign limited liability company or foreign other business
24 entity shall comply with Section 17710.02.

25 (b) If the limited liability company is converting into a foreign
26 limited liability company or foreign other business entity, those
27 conversion proceedings shall be in accordance with the laws of
28 the state or place of organization of the foreign limited liability
29 company or foreign other business entity and the conversion shall
30 become effective in accordance with that law.

31 (c) (1) To enforce an obligation of a limited liability company
32 that has converted to a foreign limited liability company or foreign
33 other business entity, the Secretary of State shall only be the agent
34 for service of process in an action or proceeding against that
35 converted foreign entity, if the agent designated for the service of
36 process for that entity is a natural person and cannot be found with
37 due diligence or if the agent is a corporation and no person, to
38 whom delivery may be made, may be located with due diligence,
39 or if no agent has been designated and if none of the officers,
40 members, managers, members, or agents of that entity may be

1 located after diligent search, and it is shown by affidavit to the
2 satisfaction of the court. The court then may make an order that
3 service be made by personal delivery to the Secretary of State or
4 to an assistant or deputy Secretary of State of two copies of the
5 process together with two copies of the order, and the order shall
6 set forth an address to which the process shall be sent by the
7 Secretary of State. Service in this manner is deemed complete on
8 the 10th day after delivery of the process to the Secretary of State.

9 (2) Upon receipt of the process and order and the fee set forth
10 in Section 12206 of the Government Code, the Secretary of State
11 shall provide notice to that entity of the service of the process by
12 forwarding by certified mail, return receipt requested, a copy of
13 the process and order to the address specified in the order.

14 (3) The Secretary of State shall keep a record of all process
15 served upon the Secretary of State and shall record the time of
16 service and the Secretary of State's action with respect to the
17 process served. The certificate of the Secretary of State, under the
18 Secretary of State's official seal, certifying to the receipt of process,
19 the providing of notice of process to that entity, and the forwarding
20 of the process shall be competent and prima facie evidence of the
21 matters stated therein.

22 17710.06. (a) Upon conversion of a limited liability company,
23 one of the following applies:

24 (1) If the limited liability company is converting into a domestic
25 limited partnership, a statement of conversion shall be completed
26 on a certificate of limited partnership for the converted entity and
27 shall be filed with the Secretary of State.

28 (2) If the limited liability company is converting into a domestic
29 partnership, a statement of conversion shall be completed on the
30 statement of partnership authority for the converted entity. If no
31 statement of partnership authority is filed, a certificate of
32 conversion shall be filed separately with the Secretary of State.

33 (3) If the limited liability company is converting into a domestic
34 corporation, a statement of conversion shall be completed on the
35 articles of incorporation for the converted entity and shall be filed
36 with the Secretary of State.

37 (4) If the limited liability company is converting to a foreign
38 limited liability company or foreign other business entity, a
39 certificate of conversion shall be filed with the Secretary of State.

1 (b) Any certificate or statement of conversion shall be executed
2 and acknowledged by all members, unless a lesser number is
3 provided in the certificate of organization or operating agreement,
4 and shall set forth all of the following:

5 (1) The name and the Secretary of State's file number of the
6 converting limited liability company.

7 (2) A statement that the principal terms of the plan of conversion
8 were approved by a vote of the members, that equaled or exceeded
9 the vote required under Section 17710.03, specifying each class
10 entitled to vote and the percentage vote required of each class.

11 (3) The form of organization of the converted entity.

12 (4) The mailing address of the converted entity's agent for
13 service of process and the chief executive office of the converted
14 entity.

15 (c) The filing with the Secretary of State of a certificate of
16 conversion or a statement of partnership authority, certificate of
17 organization, or articles of incorporation containing a statement
18 of conversion as set forth in subdivision (a) shall have the effect
19 of the filing of a certificate of cancellation by the converting limited
20 liability company, and no converting limited liability company
21 that has made the filing is required to take any action under Article
22 7 (commencing with Section 17707.01) as a result of that
23 conversion.

24 17710.07. (a) Whenever a limited liability company or other
25 business entity having any real property in this state converts into
26 a limited liability company or an other business entity pursuant to
27 the laws of this state or of the state or place where the limited
28 liability company or other business entity was organized, and the
29 laws of the state or place of organization, including this state, of
30 the converting limited liability company or other converting entity
31 provide substantially that the conversion vests in the converted
32 limited liability company or other converted entity all the real
33 property of the converting limited liability company or other
34 converting entity, the filing for record in the office of the county
35 recorder of any county in this state where any of the real property
36 of the converting limited liability company or other converting
37 entity is located shall evidence record ownership in the converted
38 limited liability company or other converted entity of all interest
39 of the converting limited liability company or other converting

1 entity in and to the real property located in that county if both of
2 the following apply:

3 (1) A certificate of conversion or statement of partnership
4 authority, certificate of limited partnership, or certificate of
5 organization complying with Section 17710.06, in the form
6 prescribed and certified by the Secretary of State.

7 (2) A copy of a certificate of conversion on a statement of
8 limited partnership authority, certificate of limited partnership,
9 certificate of organization, articles of incorporation, or other
10 certificate or document evidencing the creation of a foreign other
11 business entity or foreign limited liability company by conversion,
12 containing a statement of conversion, certified by the Secretary of
13 State or an authorized public official of the state or place pursuant
14 to the laws of which the conversion is effected.

15 (b) A filed and, if appropriate, recorded certificate of conversion
16 or a statement of partnership authority, certificate of limited
17 partnership, certificate of organization, articles or certificate of
18 incorporation, or other certificate evidencing the creation of a
19 foreign other business entity or foreign limited liability company
20 by conversion, containing a statement of conversion, filed pursuant
21 to subdivision (a) of Section 17710.06, stating the name of the
22 converting limited liability company or other converting entity in
23 whose name property was held before the conversion and the name
24 of the converted entity or converted limited liability company, but
25 not containing all of the other information required by Section
26 17710.06, operates with respect to the entities named to the extent
27 provided in subdivision (a).

28 (c) Recording of a certificate of conversion, or a statement of
29 partnership authority, certificate of limited partnership, certificate
30 of organization, articles of incorporation, or other certificate
31 evidencing the creation of an other business entity or a limited
32 liability company by conversion, containing a statement of
33 conversion, in accordance with subdivision (a), shall create, in
34 favor of bona fide purchasers or encumbrances for value, a
35 conclusive presumption that the conversion was validly completed.

36 17710.08. (a) An other business entity or a foreign other
37 business entity or a foreign limited liability company may be
38 converted to a domestic limited liability company pursuant to this
39 article only if the converting entity is authorized by the laws
40 pursuant to which it is organized to effect the conversion.

1 (b) An other business entity or a foreign other business entity
2 or a foreign limited liability company that desires to convert into
3 a domestic limited liability company shall approve a plan of
4 conversion or another instrument as is required to be approved to
5 effect the conversion pursuant to the laws under which that entity
6 is organized.

7 (c) The conversion of an other business entity or a foreign other
8 business entity or a foreign limited liability company into a
9 domestic limited liability company shall be approved by the
10 number or percentage of the members, members, shareholders, or
11 holders of interest of the converting entity as is required by the
12 laws under which that entity is organized, or a greater or lesser
13 percentage, subject to applicable laws, as set forth in the converting
14 entity's partnership agreement, certificate of organization, operating
15 agreement, articles or certificate of incorporation, or other
16 governing document.

17 (d) The conversion by an other business entity or a foreign other
18 business entity or a foreign limited liability company into a
19 domestic limited liability company shall be effective under this
20 article at the time the conversion is effective under the laws under
21 which the converting entity is organized, as long as a certificate
22 of organization containing a statement of conversion has been filed
23 with the Secretary of State. If the converting entity's governing
24 law is silent as to the effectiveness of the conversion, the
25 conversion shall be effective upon the completion of all acts
26 required under this title to form a limited liability company.

27 (e) The filing with the Secretary of State of a certificate of
28 conversion or a certificate of organization containing a statement
29 of conversion pursuant to subdivision (a) shall have the effect of
30 the filing of a certificate of cancellation by the converting foreign
31 limited liability company or foreign limited liability company and
32 no converting foreign limited liability company or foreign limited
33 liability company that has made the filing is required to take any
34 action under Article 7 (commencing with Section 17701.01)
35 concerning dissolution as a result of that conversion. If a converting
36 other business entity is a foreign corporation qualified to transact
37 business in this state, the foreign corporation shall, by virtue of
38 the filing, automatically surrender its right to transact intrastate
39 business.

1 17710.09. (a) An entity that converts into another entity
2 pursuant to this article is for all purposes other than for the purposes
3 of Part 10 (commencing with Section 17701), Part 10.20
4 (commencing with Section 18401), and Part 11 (commencing with
5 Section 23001) of Division 2 of the Revenue and Taxation Code,
6 the same entity that existed before the conversion and the
7 conversion shall not be deemed a transfer of property.

8 (b) Upon a conversion taking effect, all of the following apply:

9 (1) All the rights and property, whether real, personal, or mixed,
10 of the converting entity or converting limited liability company
11 are vested in the converted entity or converted limited liability
12 company.

13 (2) All debts, liabilities, and obligations of the converting entity
14 or converting limited liability company continue as debts,
15 liabilities, and obligations of the converted entity or converted
16 limited liability company.

17 (3) All rights of creditors and liens upon the property of the
18 converting entity or converting limited liability company shall be
19 preserved unimpaired and remain enforceable against the converted
20 entity or converted limited liability company to the same extent
21 as against the converting entity or converting limited liability
22 company as if the conversion had not occurred.

23 (4) Any action or proceeding pending by or against the
24 converting entity or converting limited liability company may be
25 continued against the converted entity or converted limited liability
26 company as if the conversion had not occurred.

27 (c) A member of a converting limited liability company is liable
28 for all of the following:

29 (1) All obligations of the converting limited liability company
30 for which the member was personally liable before the conversion.

31 (2) All obligations of the converted entity incurred after the
32 conversion takes effect, but those obligations may be satisfied only
33 out of property of the entity if that member of a limited liability
34 company, or a shareholder in a corporation, or unless expressly
35 provided otherwise in the certificate of organization or other
36 governing documents, a limited partner of a limited partnership,
37 or a holder of equity securities in another converted entity if the
38 holders of equity securities in that entity are not personally liable
39 for the obligations of that entity under the law under which the
40 entity is organized or its governing documents.

1 (d) A member of a converted limited liability company remains
2 liable for any and all obligations of the converting entity for which
3 the member was personally liable before the conversion, but only
4 to the extent that the member was liable for the obligations of the
5 converting entity prior to the conversion.

6 17710.10. Mergers of limited liability companies shall be
7 governed by Sections 17710.11 to 17710.19, inclusive.

8 17710.11. The following entities may be merged pursuant to
9 this article:

10 (a) Two or more limited liability companies into one limited
11 liability company.

12 (b) One or more limited liability companies and one or more
13 other business entities into one of those other business entities.

14 (c) (1) One or more limited liability companies and one or more
15 other business entities into one limited liability company.

16 (2) Notwithstanding this section, the merger of any number of
17 limited liability companies with any number of other business
18 entities may be effected only if the other business entities that are
19 organized in California are authorized by the laws under which
20 they are organized to effect the merger, and the following apply:

21 (A) If a limited liability company is the surviving limited
22 liability company, the foreign other business entities are not
23 prohibited by the laws under which they are organized from
24 effecting that merger.

25 (B) If a foreign limited liability company or foreign other
26 business entity is the survivor of the merger, the laws of the
27 jurisdiction under which the survivor is organized authorize that
28 merger. Notwithstanding the first sentence of this paragraph, if
29 one or more domestic corporations is also a party to the merger
30 described in that sentence, the merger may be effected only if,
31 with respect to any foreign other business entity that is a
32 corporation, the foreign corporation is authorized by the laws under
33 which it is organized to effect that merger.

34 17710.12. (a) Each limited liability company and other
35 business entity that desires to merge shall approve an agreement
36 of merger. The agreement of merger shall be approved by all
37 managers and a majority in interest of each class of membership
38 interests of each constituent limited liability company, unless a
39 greater approval is required by the operating agreement of the
40 constituent limited liability company. Notwithstanding the previous

1 sentence, if the members of any constituent limited liability
2 company become personally liable for any obligations of a
3 constituent limited liability company or constituent other business
4 entity as a result of the merger, the principal terms of the agreement
5 of merger shall be approved by all of the members of the
6 constituent limited liability company, unless the agreement of
7 merger provides that all members shall have the dissenters' rights
8 provided in Article 11 (commencing with Section 17711.01). The
9 agreement of merger shall be approved on behalf of each
10 constituent other business entity by those persons required to
11 approve the merger by the laws under which it is organized. Other
12 persons, including a parent of a constituent limited liability
13 company, may be parties to the agreement of merger. The
14 agreement of merger shall state all of the following:

15 (1) The terms and conditions of the merger.

16 (2) The name and place of the organization of the surviving
17 limited liability company or surviving other business entity, and
18 of each disappearing limited liability company and disappearing
19 other business entity, and the agreement of merger may change
20 the name of the surviving limited liability company, the new name
21 may be the same as or similar to the name of a disappearing
22 domestic or foreign limited liability company, subject to Section
23 17710.08.

24 (3) The manner of converting the membership interests of each
25 of the constituent limited liability companies into interests, shares,
26 or other securities of the surviving limited liability company or
27 surviving other business entity, and if limited liability company
28 interests of any of the constituent limited liability companies are
29 not to be converted solely into interests, shares, or other securities
30 of the surviving limited liability company or surviving other
31 business entity, the cash, property, rights, interests, or securities
32 that the holders of the limited liability company interests are to
33 receive in exchange for the membership interests, the cash,
34 property, rights, interests, or securities that may be in addition to
35 or in lieu of interests, shares, or other securities of the surviving
36 limited liability company or surviving other business entity, or
37 that the liability company interests are canceled without
38 consideration.

39 (4) Any other details or provisions that are required by the laws
40 under which any constituent other business entity is organized,

1 including, if a domestic corporation is a party to the merger,
2 subdivision (b) of Section 17711.13.

3 (5) Any other details or provisions that are desired, including,
4 without limitation, a provision for the treatment of fractional
5 membership interests.

6 (b) (1) Each membership interest of the same class of any
7 constituent limited liability company, other than a membership
8 interest in another constituent limited liability company that is
9 being canceled and that is held by a constituent limited liability
10 company or its parent or a limited liability company of which the
11 constituent limited liability company is a parent shall, unless all
12 members of the class consent, be treated equally with respect to
13 any distribution of cash, property, rights, interests, or securities.

14 (2) Notwithstanding paragraph (1), except in a merger of a
15 limited liability company with a limited liability company that
16 controls at least 90 percent of the membership interests entitled to
17 vote with respect to the merger, the unredeemable membership
18 interests of a constituent limited liability company may be
19 converted only into unredeemable interests or securities of the
20 surviving limited liability company or other business entity, or a
21 parent if a constituent limited liability company or a constituent
22 other business entity or its parent owns, directly or indirectly, prior
23 to the merger, membership interests of another constituent limited
24 liability company or interests or securities of a constituent other
25 business entity representing more than 50 percent of the interests
26 or securities entitled to vote with respect to the merger of the other
27 constituent limited liability company or constituent other business
28 entity or more than 50 percent of the voting power, as defined in
29 Section 194.5, of a constituent other business entity that is a
30 domestic corporation, unless all of the members of the class
31 consent.

32 (3) This subdivision shall apply only to constituent limited
33 liability companies with over 35 members.

34 (c) Notwithstanding its prior approval, an agreement of merger
35 may be amended prior to the filing of the certificate of merger or
36 the agreement of merger, as provided in Section 17710.14, if the
37 amendment is approved by the managers and members of each
38 constituent limited liability company in the same manner as
39 required for approval of the original agreement of merger and, if
40 the amendment changes any of the principal terms of the agreement

1 of merger, the amendment is approved by the managers and
2 members of each constituent limited liability company in the same
3 manner and to the same extent as required for the approval of the
4 original agreement of merger, and by each of the constituent other
5 business entities.

6 (d) The managers and members of a constituent limited liability
7 company may, in their discretion, abandon a merger, subject to
8 the contractual rights, if any, of third parties, including other
9 constituent limited liability companies and constituent other
10 business entities, without further approval by the membership
11 interests, at any time before the merger is effective.

12 (e) An agreement of merger approved in accordance with
13 subdivision (a) may do the following:

14 (1) Effect any amendment to the operating agreement of any
15 constituent limited liability company.

16 (2) Effect the adoption of a new operating agreement for a
17 constituent limited liability company if it is the surviving limited
18 liability company in the merger. Any amendment to an operating
19 agreement or adoption of a new operating agreement made pursuant
20 to the foregoing sentence shall be effective at the effective time
21 or date of the merger. Notwithstanding the above provisions of
22 this subdivision, if a greater number of members is required to
23 approve an amendment to the operating agreement of a constituent
24 limited liability company than is required to approve the agreement
25 of merger pursuant to subdivision (a), and the number of members
26 that approve the agreement of merger is less than the number of
27 members required to approve an amendment to the operating
28 agreement of the constituent limited liability company, any
29 amendment to the operating agreement or adoption of a new
30 operating agreement of that constituent limited liability company
31 made pursuant to the first sentence of this subdivision shall be
32 effective only if the agreement of merger provides that all of the
33 members shall have the dissenters' rights provided in Article 11
34 (commencing with Section 17711.01).

35 (f) The surviving limited liability company or surviving other
36 business entity shall keep the agreement of merger at its designated
37 office or at the business address specified in paragraph (5) of
38 subdivision (a) of Section 17710.14, as applicable, and, upon the
39 request of a member of a constituent limited liability company or
40 a holder of shares, interests, or other securities of a constituent

1 other business entity, the managers or members of the surviving
2 limited liability company or the authorized person of the surviving
3 other business entity shall promptly deliver to the member or the
4 holder of shares, interests, or other securities, at the expense of the
5 surviving limited liability company or surviving other business
6 entity, a copy of the agreement of merger. A waiver by a member
7 or holder of shares, interests, or other securities of the rights
8 provided in this subdivision shall be unenforceable.

9 17710.13. Subdivision (b) of Section 17710.12 shall not apply
10 to any transaction if the commissioner has approved the terms and
11 conditions of the transaction and the fairness of such terms and
12 conditions pursuant to Section 25142.

13 17710.14. (a) If the surviving entity is a limited liability
14 company or an other business entity, other than a corporation in a
15 merger in which a domestic corporation is a constituent party, after
16 approval of a merger by the constituent limited liability companies
17 and any constituent other business entities, the constituent limited
18 liability companies and constituent other business entities shall
19 file a certificate of merger in the office of, and on a form prescribed
20 by, the Secretary of State. The certificate of merger shall be
21 executed and acknowledged by each domestic constituent limited
22 liability company by all managers, or if none, all members unless
23 a lesser number is provided in the certificate of organization or
24 operating agreement of the domestic constituent limited liability
25 company and by each foreign constituent limited liability company
26 by one or more managers, or if none, members, and by each
27 constituent other business entity by those persons required to
28 execute the certificate of merger by the laws under which the
29 constituent other business entity is organized. The certificate of
30 merger shall set forth all of the following:

31 (1) The names and the Secretary of State's file numbers, if any,
32 of each of the constituent limited liability companies and
33 constituent other business entities, separately identifying the
34 disappearing limited liability companies and disappearing other
35 business entities and the surviving limited liability company or
36 surviving other business entity.

37 (2) If a vote of the members was required pursuant to Section
38 17710.12, a statement setting forth the total number of outstanding
39 interests of each class entitled to vote on the merger and that the
40 principal terms of the agreement of merger were approved by a

1 vote of the number of interests of each class that equaled or
2 exceeded the vote required, specifying each class entitled to vote
3 and the percentage vote required of each class.

4 (3) If the surviving entity is a limited liability company and not
5 an other business entity, any change required to the information
6 set forth in the certificate of organization of the surviving limited
7 liability company resulting from the merger, including any change
8 in the name of the surviving limited liability company resulting
9 from the merger. The filing of a certificate of merger setting forth
10 any such changes to the certificate of organization of the surviving
11 limited liability company shall have the effect of the filing of a
12 certificate of amendment by the surviving limited liability
13 company, and the surviving limited liability company need not
14 file a certificate of amendment under Section 17702.02 to reflect
15 those changes.

16 (4) The future effective date, that shall be a date certain not
17 more than 90 days subsequent to the date of filing of the merger,
18 if the merger is not to be effective upon the filing of the certificate
19 of merger with the office of the Secretary of State.

20 (5) If the surviving entity is an other business entity or a foreign
21 limited liability company, the full name of the entity, type of entity,
22 legal jurisdiction where the entity was organized and by whose
23 laws its internal affairs are governed, and the address of the
24 principal place of business of the entity.

25 (6) Any other information required to be stated in the certificate
26 of merger by the laws where each constituent other business entity
27 is organized, including, if a domestic corporation is a party to the
28 merger, paragraph (2) of subdivision (g) of Section 17711.13. If
29 the surviving entity is a foreign limited liability company in a
30 merger where a domestic corporation is a disappearing other
31 business entity, a copy of the agreement of merger and attachments
32 as required under paragraph (1) of subdivision (g) of Section
33 17711.13 shall be filed at the same time as the filing of the
34 certificate of merger.

35 (b) If the surviving entity is a domestic corporation or a foreign
36 corporation in a merger that a domestic corporation is a constituent
37 party, after approval of the merger by the constituent limited
38 liability companies and constituent other business entities, the
39 surviving corporation shall file in the office of the Secretary of
40 State a copy of the agreement of merger and attachments required

1 under paragraph (1) of subdivision (g) of Section 17711.13. The
2 certificate of merger shall be executed and acknowledged by each
3 domestic constituent limited liability company by all general
4 members, unless a lesser number is provided in the certificate of
5 limited liability company of the domestic constituent limited
6 liability company.

7 (c) A certificate of merger or the agreement of merger, as is
8 applicable under subdivisions (a) and (b), shall have the effect of
9 the filing of a certificate of cancellation for each disappearing
10 limited liability company, and no disappearing limited liability
11 company need take any action under Article 7 (commencing with
12 Section 17707.01) concerning dissolution as a result of the merger.

13 (d) If the organization disappearing into the other business entity
14 is a foreign corporation qualified to transact intrastate business in
15 this state, a certificate of satisfaction of the Franchise Tax Board
16 as required by Section 23334 of the Revenue and Taxation Code
17 shall be filed with the certificate of merger or agreement of merger,
18 as is applicable under subdivisions (a) and (b). By the filing of the
19 certificate of merger or agreement of merger, as is applicable, the
20 foreign corporation shall automatically surrender its right to
21 transact intrastate business.

22 17710.15. (a) Unless a future effective date is provided in a
23 certificate of merger or the agreement of merger, if an agreement
24 of merger is required to be filed under Section 17710.14, in which
25 event the merger shall be effective at that future effective date, a
26 merger shall be effective upon the filing of the certificate of merger
27 or the agreement of merger, as is applicable, in the office of the
28 Secretary of State.

29 (b) (1) For all purposes, a copy of the certificate of merger duly
30 certified by the Secretary of State is conclusive evidence of the
31 merger of the constituent limited liability companies, either by
32 themselves or together with constituent other business entities,
33 into the surviving other business entity, or the constituent limited
34 liability companies or the constituent other business entities, or
35 both, into the surviving limited liability company.

36 (2) In a merger in which the surviving entity is a corporation in
37 a merger in which a domestic corporation and a domestic limited
38 liability company are parties to the merger, a copy of an agreement
39 of merger certified on or after the effective date by an official
40 having custody thereof has the same force in evidence as the

1 original and, except as against the state, is conclusive evidence of
2 the performance of all conditions precedent to the merger, the
3 existence on the effective date of the surviving corporation, and
4 the performance of the conditions necessary to the adoption of any
5 amendment to the articles of incorporation of the surviving
6 corporation, if applicable, contained in the agreement of merger.

7 17710.16. (a) Upon a merger of limited liability companies
8 or limited liability companies and other business entities pursuant
9 to this chapter, the separate existence of the disappearing limited
10 liability companies and disappearing other business entities ceases
11 and the surviving limited liability company or surviving other
12 business entity shall succeed, without other transfer, act or deed,
13 to all the rights and property, whether real, personal, or mixed, of
14 each of the disappearing limited liability companies and
15 disappearing other business entities, and shall be subject to all the
16 debts and liabilities of each in the same manner as if the surviving
17 limited liability company or surviving other business entity had
18 itself incurred them.

19 (b) All rights of creditors and all liens upon the property of each
20 of the constituent limited liability companies and constituent other
21 business entities shall be preserved unimpaired and may be
22 enforced against the surviving limited liability company or the
23 surviving other business entity to the same extent as if the debt,
24 liability, or duty which gave rise to that lien had been incurred or
25 contracted by the surviving limited liability company or the
26 surviving other business entity, provided that such liens upon the
27 property of a disappearing limited liability company or
28 disappearing other business entity shall be limited to the property
29 affected thereby immediately prior to the time the merger is
30 effective.

31 (c) Any action or proceeding pending by or against any
32 disappearing limited liability company or disappearing other
33 business entity may be prosecuted to judgment, which shall bind
34 the surviving limited liability company or surviving other business
35 entity, or the surviving limited liability company or surviving other
36 business entity may be proceeded against or be substituted in the
37 place of the disappearing limited liability company or disappearing
38 other business entity.

39 (d) Nothing in this article is intended to affect the liability a
40 member of a disappearing limited liability company may have in

1 connection with the debts and liabilities of the disappearing limited
2 liability company existing prior to the time the merger is effective.

3 17710.17. (a) The merger of any number of domestic limited
4 liability companies with any number of foreign limited liability
5 companies or foreign other business entities shall be required to
6 comply with Section 17710.10.

7 (b) If the surviving entity is a domestic limited liability company
8 or a domestic other business entity, the merger proceedings with
9 respect to that limited liability company or other business entity
10 and any domestic disappearing limited liability company shall
11 conform to the provisions of this chapter governing the merger of
12 domestic limited liability companies, but if the surviving entity is
13 a foreign limited liability company or a foreign other business
14 entity, then, subject to the requirements of subdivision (d) and
15 Article 11 (commencing with Section 17711.01) and, with respect
16 to any domestic constituent corporation, Section 17711.13, and
17 Chapter 12 (commencing with Section 17712.00) and Chapter 13
18 (commencing with Section 17713.00) of Division 1 of Title 1, the
19 merger proceedings may be in accordance with the laws of the
20 state or place of organization of the surviving limited liability
21 company or surviving other business entity.

22 (c) If the surviving entity is a domestic limited liability company
23 or domestic other business entity, other than a domestic
24 corporation, the certificate of merger shall be filed as provided in
25 subdivision (a) of Section 17710.14, and thereupon, subject to
26 subdivision (a) of Section 17710.15, the merger shall be effective
27 as to each domestic constituent limited liability company and
28 domestic constituent other business entity. If the surviving entity
29 is a domestic corporation, the agreement of merger with
30 attachments shall be filed pursuant to in subdivision (b) of Section
31 17710.14, and thereupon, subject to subdivision (a) of Section
32 17710.15, the merger shall be effective as to each domestic
33 constituent limited liability company and domestic constituent
34 other business entity unless another effective date is provided
35 pursuant to Article 11 (commencing with Section 17711.01) of
36 Division 1 of Title 1, with respect to any constituent corporation
37 or constituent limited liability company.

38 (d) If the surviving entity is a foreign limited liability company
39 or foreign other business entity, the merger shall become effective
40 in accordance with the law of the jurisdiction where the surviving

1 limited liability company or surviving other business entity is
2 organized, but shall be effective as to any domestic disappearing
3 limited liability company as of the time of effectiveness in the
4 foreign jurisdiction upon the filing in this state of a certificate of
5 merger or agreement of merger pursuant to Section 17710.14.

6 (e) If a merger described in subdivision (c) or (d) also includes
7 a foreign disappearing limited liability company previously
8 registered for the transaction of intrastate business in this state
9 pursuant to Section 17708.02, the filing of the certificate of merger
10 or agreement of merger, as is applicable under Section 17710.14,
11 automatically has the effect of a cancellation of registration for
12 that foreign limited liability company pursuant to Section 17708.07
13 without the necessity of the filing of a certificate of cancellation.

14 (f) The provisions of subdivision (b) of Section 17710.12 and
15 Article 11 (commencing with Section 17711.01) apply to the rights
16 of the limited members of any of the constituent limited liability
17 companies that are domestic limited liability companies and of
18 any domestic limited liability company that is a parent of any
19 foreign constituent limited liability company.

20 17710.18. Whenever a domestic or foreign limited liability
21 company or other business entity having any real property in this
22 state merges with another limited liability company or other
23 business entity pursuant to the laws of this state or of the state or
24 place where any constituent limited liability company or constituent
25 other business entity was organized, and the laws of the state or
26 place of organization, including this state of any disappearing
27 limited liability company or disappearing other business entity
28 provide substantially that the making and filing of the agreement
29 of merger or certificate of merger vests in the surviving limited
30 liability company or surviving other business entity all the real
31 property of any disappearing limited liability company and
32 disappearing other business entity, the filing for record in the office
33 of the county recorder of any county in this state where any of the
34 real property of the disappearing limited liability company or
35 disappearing other business entity is located of either of the
36 following shall evidence record ownership in the surviving limited
37 liability company or surviving other business entity of all interest
38 of the disappearing limited liability company or disappearing other
39 business entity in and to the real property located in that county
40 in which both of the following occur:

1 (a) A certificate of merger certified by the Secretary of State,
2 or other certificate prescribed by the Secretary of State.

3 (b) A copy of the agreement of merger or certificate of merger,
4 certified by the Secretary of State or an authorized public official
5 of the state or place pursuant to the laws of which the merger is
6 effected.

7 17710.19. Recording of the certificate of merger in accordance
8 with Section 17710.18 shall create, in favor of bona fide purchasers
9 or encumbrancers for value, a conclusive presumption that the
10 merger was validly completed.

11
12 Article 11. Dissenters' Rights

13
14 17711.01. (a) For purposes of this article, "reorganization"
15 refers to any of the following:

16 (1) A conversion pursuant to Article 10 (commencing with
17 Section 17710.01).

18 (2) A merger pursuant to Article 10 (commencing with Section
19 17710.01).

20 (3) The acquisition by one limited liability company in
21 exchange, in whole or in part, for its membership interests, or the
22 membership interests or equity securities of a limited liability
23 company or other business entity that is in control of the acquiring
24 limited liability company, of membership interests or equity
25 securities of another limited liability company or other business
26 entity if, immediately after the acquisition, the acquiring limited
27 liability company has control of the other limited liability company
28 or other business entity.

29 (4) The acquisition by one limited liability company in exchange
30 in whole or in part for its membership interests, or the membership
31 interests or equity securities of a limited liability company or other
32 business entity which is in control of the acquiring limited liability
33 company, or for its debts securities, or debt securities of a limited
34 liability company or other business entity which is in control of
35 the acquiring limited liability company, that are not adequately
36 secured and that have a maturity date in excess of five years after
37 the consummation of the acquisition, or both, of all or substantially
38 all of the assets of another limited liability company or other
39 business entity.

(b) For purposes of this article, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited liability company or other business entity.

17711.02. (a) If the approval of outstanding membership interests is required for a limited liability company to participate in a reorganization, pursuant to the limited liability company agreement, or otherwise, then each member of the limited liability company holding those interests may, by complying with this article, require the limited liability company to purchase for cash, at its fair market value, the interest owned by the member in the limited liability company, if the interest is a dissenting interest as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization, excluding any appreciation or depreciation in consequence of the proposed reorganization.

(b) As used in this article, “dissenting interest” means the interest of a member that satisfies all of the following conditions:

(1) Either:

(A) Was not, immediately prior to the reorganization, either (i) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100, or (ii) listed on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, provided that in either instance the limited liability company whose outstanding interests are so listed provides, in its notice to members requesting their approval of the proposed reorganization, a summary of the provisions of this section and Sections 17711.03, 17711.04, 17711.05 and 17711.06.

(B) If the interest is of a class of interests listed as described in clause (i) or (ii) of subparagraph (A), demands for payment are filed with respect to 5 percent or more of the outstanding interests of that class.

(2) Was outstanding on the date for the determination of members entitled to vote on the reorganization.

(3) Either:

(A) Was not voted in favor of the reorganization.

(B) If the interest is described in clause (i) or (ii) of subparagraph (A) of paragraph (1), was voted against the reorganization; provided, however, that subparagraph (A) rather than subparagraph

1 (B) of this paragraph applies in any event where the approval for
2 the proposed reorganization is sought by written consent rather
3 than at a meeting.

4 (4) The member has demanded that it be purchased by the
5 limited liability company at its fair market value in accordance
6 with Section 17711.03.

7 (5) The member has submitted it for endorsement, if applicable,
8 in accordance with Section 17711.04.

9 (c) As used in this article, “dissenting member” means the
10 recordholder of a dissenting interest, and includes an assignee of
11 record of that interest.

12 17711.03. (a) If members have a right under Section 17711.02,
13 subject to compliance with paragraphs (4) and (5) of subdivision
14 (b) of Section 17711.02, to require the limited liability company
15 to purchase their membership interests for cash, such limited
16 liability company shall mail to each member a notice of the
17 approval of the reorganization by the requisite vote or consent of
18 the members, within 10 days after the date of the approval,
19 accompanied by a copy of this section and Sections 17711.01,
20 17711.02, 17711.04, and 17711.05, a statement of the price
21 determined by the limited liability company to represent the fair
22 market value of its outstanding interests, and a brief description
23 of the procedure to be followed if the member desires to exercise
24 the member’s rights under those sections. The statement of price
25 constitutes an offer by the limited liability company to purchase
26 at the price stated any dissenting interests as defined in subdivision
27 (b) of Section 17711.02, unless they lose their status as dissenting
28 interests under Section 17711.11.

29 (b) Any member who has a right to require the limited liability
30 company to purchase the member’s interest for cash under Section
31 17711.02, subject to compliance with paragraphs (4) and (5) of
32 subdivision (b) of Section 17711.02, and who desires the limited
33 liability company to purchase that interest, shall make written
34 demand upon the limited liability company for the purchase of
35 that interest and the payment to the member in cash of its fair
36 market value. The demand is not effective for any purpose unless
37 it is received by the limited liability company or any transfer agent
38 thereof (1) in the case of interests described in clause (i) or (ii) of
39 subparagraph (A) of paragraph (1) of subdivision (b) of Section
40 17711.02, not later than the date of the members’ meeting to vote

1 upon the reorganization, or (2) in any other case, within 30 days
2 after the date on which notice of the approval of the reorganization
3 by the requisite vote or consent of the members is mailed by the
4 limited liability company to the members.

5 (c) The demand shall state the number or amount of the
6 member's interest in the limited liability company and shall contain
7 a statement of what the member claims to be the fair market value
8 of that interest on the day before the announcement of the proposed
9 reorganization. The statement of fair market value constitutes an
10 offer by the member to sell the interest at such price.

11 17710.04. Within 30 days after the date on which notice of the
12 approval of the outstanding interests of the limited liability
13 company is mailed to the member pursuant to subdivision of
14 Section 17711.03, the member shall submit to the limited liability
15 company at its principal office or at the office of any transfer agent
16 thereof, if the interest is evidenced by a certificate, the member's
17 certificate representing the interest which the member demands
18 that the limited liability company purchase, to be stamped or
19 endorsed with a statement that the interest is a dissenting interest
20 or to be exchanged for certificates of appropriate denominations
21 so stamped or endorsed, or if the interest is not evidenced by a
22 certificate, written notice of the number or amount of interest which
23 the member demands that the limited liability company purchase.
24 Upon subsequent transfers of the dissenting interest on the books
25 of the limited liability company, the new certificates or other
26 written statement issued therefor shall bear a like statement,
27 together with the name of the original holder of the dissenting
28 interest.

29 17711.05. (a) If the limited liability company and the
30 dissenting member agree that the member's interest is a dissenting
31 interest and agree upon the price to be paid for the dissenting
32 interest, the dissenting member is entitled to the agreed price with
33 interest thereon at the legal rate on judgments from the date of
34 consummation of the reorganization. All agreements fixing the
35 fair market value of any dissenting member's interest as between
36 the limited liability company and that member shall be in writing
37 and filed in the records of the limited liability company.

38 (b) Subject to the provisions of Section 17711.08, payment of
39 the fair market value for a dissenting interest shall be made within
40 30 days after the amount has been agreed to or within 30 days after

1 any statutory or contractual conditions to the reorganization are
2 satisfied, whichever is later, and in the case of dissenting interests
3 evidenced by certificates of interest, subject to surrender of such
4 certificates of interest, unless provided otherwise by agreement.

5 17711.06. (a) If the limited liability company denies that a
6 membership interest is a dissenting interest, or the limited liability
7 company and a dissenting member fail to agree upon the fair
8 market value of a dissenting interest, then the member or any
9 interested limited liability company, within six months after the
10 date when notice of the approval of the reorganization by the
11 requisite vote or consent of the members was mailed to the
12 member, but not later, may file a complaint in the superior court
13 of the proper county praying the court to determine whether the
14 interest is a dissenting interest, or the fair market value of the
15 dissenting interest, or both, or may intervene in any action pending
16 on such a complaint.

17 (b) Two or more dissenting members may join as plaintiffs or
18 be joined as defendants in any of those actions and two or more
19 of those actions may be consolidated.

20 (c) On the trial of the action, the court shall determine the issues.
21 If the status of the membership interest as a dissenting interest is
22 in issue, the court shall first determine that issue. If the fair market
23 value of the dissenting interest is in issue, the court shall determine,
24 or shall appoint one or more impartial appraisers to determine, the
25 fair market value of the dissenting interest.

26 17711.07. (a) If the court appoints an appraiser or appraisers,
27 they shall proceed forthwith to determine the fair market value per
28 interest of the outstanding membership interests of the limited
29 liability company, by class if necessary. Within the time fixed by
30 the court, the appraisers, or a majority of them, shall make and file
31 a report in the office of the clerk of the court. Thereupon, on the
32 motion of any party, the report shall be submitted to the court and
33 considered on such additional evidence as the court considers
34 relevant. If the court finds the report reasonable, the court may
35 confirm it.

36 (b) If a majority of the appraisers appointed fails to make and
37 file a report within 30 days from the date of their appointment, or
38 within a further time as may be allowed by the court, or the report
39 is not confirmed by the court, the court shall determine the fair

1 market value per interest of the outstanding membership interests
2 of the limited liability company, by class if necessary.

3 (c) Subject to Section 17711.08, judgment shall be rendered
4 against the limited liability company for payment of an amount
5 equal to the fair market value, as determined by the court, of each
6 dissenting interest that any dissenting member who is a party, or
7 has intervened, is entitled to require the limited liability company
8 to purchase, with interest thereon at the legal rate on judgments
9 from the date of consummation of the reorganization.

10 (d) Any of those judgments shall be payable forthwith, provided,
11 however, that with respect to membership interests evidenced by
12 transferable certificates of interest, only upon the endorsement and
13 delivery to the limited liability company of those certificates
14 representing the interests described in the judgment. Any party
15 may appeal from the judgment.

16 (e) The costs of the action, including reasonable compensation
17 for the appraisers, to be fixed by the court, shall be assessed or
18 apportioned as the court considers equitable, but, if the appraisal
19 exceeds the price offered by the limited liability company, the
20 limited liability company shall pay the costs, including, in the
21 discretion of the court, if the value awarded by the court for the
22 dissenting interest is more than 125 percent of the price offered
23 by the limited liability company under subdivision (a) of Section
24 17711.02, attorney's fees and fees of expert witnesses.

25 17711.08. To the extent that the payment to dissenting members
26 of the fair market value of their dissenting interests would require
27 the dissenting members to return payment or a portion of the
28 payment by reason of Section 17711.09 or the Uniform Fraudulent
29 Transfer Act (Chapter 1 (commencing with Section 3439) of Title
30 2 of Part 2 of Division 4 of the Civil Code), then that payment or
31 portion thereof shall not be made and the dissenting members shall
32 become creditors of the limited liability company for the amount
33 not paid, together with interest thereon at the legal rate on
34 judgments until the date of payment, but subordinate to all other
35 creditors in any proceeding relating to the winding up and
36 dissolution of the limited liability company, such debt to be payable
37 when permissible.

38 17711.09. Any cash distributions made by a limited liability
39 company to a dissenting member after the date of consummation
40 of the reorganization, but prior to any payment by the limited

1 liability company for that dissenting member's interest, shall be
2 credited against the total amount to be paid by the limited liability
3 company for such dissenting interest.

4 17711.10. Except as expressly limited by this article, dissenting
5 members shall continue to have all the rights and privileges incident
6 to their interests immediately prior to the reorganization, including
7 limited liability, until payment by the limited liability company
8 for their dissenting interests. A dissenting member may not
9 withdraw a demand for payment unless the limited liability
10 company consents thereto.

11 17711.11. A dissenting interest loses its status as a dissenting
12 interest and the holder thereof ceases to be a dissenting member
13 and ceases to be entitled to require the limited liability company
14 to purchase the interest upon the happening of any of the following:

15 (a) The limited liability company abandons the reorganization.
16 Upon abandonment of the reorganization, the limited liability
17 company shall pay, on demand, to any dissenting member who
18 has initiated proceeding in good faith under this article, all
19 reasonable expenses incurred in such proceedings and reasonable
20 attorney's fees.

21 (b) The interest is transferred prior to its submission for
22 endorsement in accordance with Section 17711.04.

23 (c) The dissenting member and the limited liability company
24 do not agree upon the status of the interest as a dissenting interest
25 or upon the purchase price of the dissenting interest, and neither
26 files a complaint nor intervenes in a pending action, as provided
27 in Section 17711.06, within six months after the date upon which
28 notice of the approval of the reorganization by the requisite vote
29 or consent of members was mailed to the member.

30 (d) The dissenting member, with the consent of the limited
31 liability company, withdraws the member's demand for purchase
32 of the dissenting interest.

33 17711.12. If litigation is instituted to test the sufficiency or
34 regularity of the vote or consent of the members in authorizing a
35 reorganization, any proceedings under Sections 17711.06 and
36 17711.07 shall be suspended until final determination of that
37 litigation.

38 17711.13. (a) This article applies to the following:

39 (1) A domestic limited liability company formed on or after
40 January 1, ____.

1 (2) A foreign limited liability company if the foreign limited
2 liability company was formed on or after January 1, _____ or
3 filed an application to qualify to do business on or after January
4 1, _____, and members holding more than 50 percent of the voting
5 power held by all members of the foreign limited liability company
6 reside in this state.

7 (3) A limited liability company if the operating agreement so
8 provides or if all managers and a majority of the members, if it is
9 a manager-managed limited liability company, or a majority, if it
10 is a member-managed liability company, determine that this article
11 shall apply.

12 (b) This article does not apply to membership interests governed
13 by operating agreements whose terms and provisions specifically
14 set forth the amount to be paid in respect of those interests in the
15 event of a reorganization of the limited liability company, or to
16 limited liability companies with 35 or fewer members, unless the
17 operating agreement provides that this article shall apply or unless
18 all managers and a majority of the members of a manager-managed
19 limited liability company or a majority of the member of a
20 member-managed limited liability company agree that this article
21 shall apply.

22 17711.14. (a) No member of a limited liability company who
23 has a right under this article to demand payment of cash for the
24 interest owned by a member in a limited liability company shall
25 have any right at law or in equity to attack the validity of the
26 reorganization, or to have the reorganization set aside or rescinded,
27 except in an action to test whether the vote or consent of members
28 required to authorize or approve the reorganization has been
29 obtained in accordance with the procedures established therefor
30 by the operating agreement of the limited liability company.

31 (b) If one of the parties to a reorganization is directly or
32 indirectly controlled by, or under common control with, another
33 party to the reorganization, subdivision (a) shall not apply to any
34 member of the controlled party who has not demanded payment
35 of cash for the member's interest pursuant to this article; but if the
36 member institutes any action to attack the validity of the
37 reorganization or to have the reorganization set aside or rescinded,
38 the member shall not thereafter have any right to demand payment
39 of cash for the member's interest pursuant to this article.

1 (c) If one of the parties to a reorganization is directly or
2 indirectly controlled by, or under common control with, another
3 party to the reorganization, then, in any action to attack the validity
4 of the reorganization or to have the reorganization set aside or
5 rescinded, both of the following apply:

6 (1) A party to a reorganization that controls another party to a
7 reorganization shall have the burden of proving that the transaction
8 is just and reasonable as to the members of the controlled part.

9 (2) A person that controls two or more parties to a reorganization
10 shall have the burden of proving that the transaction is just and
11 reasonable as to the members of any party so controlled.

12 (d) Subdivisions (b) and (c) shall not apply if a majority of the
13 members other than members who are directly or indirectly
14 controlled by, or under common control with, another party to the
15 reorganization approve or consent to the reorganization.

16 (e) This section shall not prevent a partner of a limited liability
17 company that is a party to a reorganization from bringing an action
18 against a manager of the limited liability company, the limited
19 liability company, or any person controlling a manager at law or
20 in equity as to any matters, including, without limitation, an action
21 for breach of fiduciary obligation or fraud, other than to attack the
22 validity of the reorganization or to have the reorganization set
23 aside or rescinded.

24 Article 12. Series Provisions

25
26
27 17712.01. (a) If a limited liability company complies with
28 Section 17712.02, an operating agreement may establish or provide
29 for the establishment of one or more designated series of assets
30 that provides either of the following:

31 (1) Separate rights, powers, or duties with respect to specified
32 property or obligations of the limited liability company or profits
33 and losses of specified property or obligations.

34 (2) A separate purpose or investment objective.

35 (b) A series established in accordance with subdivision (a) may
36 carry on any activity, whether or not for profit.

37 17712.02. (a) Subject to subdivision (b) the following apply:

38 (1) The debts, liabilities, obligations, and expenses incurred,
39 contracted for, or otherwise existing with respect to a series shall
40 be enforceable against the assets of that series only, and shall not

1 be enforceable against the assets of the limited liability company
2 generally or any other series of the limited liability company.

3 (2) None of the debts, liabilities, obligations, and expenses
4 incurred, contracted for, or otherwise existing with respect to the
5 limited liability company generally or any other series shall be
6 enforceable against the assets of a series.

7 (b) Subdivision (a) applies only if all of the following apply:

8 (1) The records maintained for that series account for the assets
9 of that series separately from the other assets of the limited liability
10 company or any other series.

11 (2) The operating agreement contains a statement regarding the
12 effect of the limitations provided in subdivision (a).

13 (3) The limited liability company's certificate of organization
14 contains a statement that the limited liability company may have
15 one or more series of assets subject to the limitations provided in
16 subdivision (a).

17 17712.03. (a) Assets of a series may be held directly or
18 indirectly, including being held in the name of the series, in the
19 name of the limited liability company, through a nominee, or
20 otherwise.

21 (b) If the records of a series are maintained in a manner so that
22 the assets of the series can be reasonably identified by specific
23 listing, category, type, quantity, or computational or allocational
24 formula or procedure, including a percentage or share of any assets,
25 or by any other method in which the identity of the assets can be
26 objectively determined, the records are considered to satisfy the
27 requirements of Section 17712.02.

28 17712.04. The statement of limitation on liabilities of a series
29 required by Section 17712.02 is sufficient even if neither of the
30 following apply at the time the statement is made:

31 (a) The limited liability company has established any series
32 under this title when the statement of limitations is contained in
33 the certificate of organization.

34 (b) The statement of limitations makes reference to a specific
35 series of the limited liability company.

36 17712.05. (a) Except as to the extent the operating agreement
37 specifically provides otherwise, a member or manager associated
38 with a series or a member or manager of the limited liability
39 company is not liable for a debt, obligation, or liability of a series,

1 including a debt, obligation, or liability under a judgment, decree,
2 or court order.

3 (b) The operating agreement may expand or restrict any duties,
4 including fiduciary duties, and related liabilities that a member,
5 manager, officer, or other person of a series has with respect to
6 any of the following:

7 (1) The series or the limited liability company.

8 (2) A member or manager of the series.

9 (3) A member or manager of the limited liability company.

10 17712.06. (a) An event that under this article or the operating
11 agreement causes a manager to cease to be a manager with respect
12 to a series does not, in and of itself, cause the manager to cease to
13 be a manager of the limited liability company or with respect to
14 any other series of the limited liability company.

15 (b) An event that under this article or the operating agreement
16 causes a member to dissociate as a member of a series does not,
17 in and of itself, cause the member to cease to be a member of any
18 other series or terminate the continued membership of a member
19 in the limited liability company or require the winding up of the
20 series, regardless of whether the member was the last remaining
21 member of the series.

22 17712.07. (a) A person has the power to dissociate as a
23 member of a series at any time, rightfully or wrongfully, by
24 withdrawing as a member of a series by express will under Section
25 17712.08.

26 (b) A person's dissociation from a series is wrongful only if
27 subdivision (a) of at least one of the following applies:

28 (1) The dissociation is in breach of an express provision of the
29 operating agreement.

30 (2) The dissociation occurs before the termination of the series
31 and at least one of the following applies:

32 (A) The person withdraws as a member of a series by express
33 will.

34 (B) The person is expelled as a member of the series by judicial
35 determination under Section 17712.04.

36 (C) The person is dissociated as a member of a series under
37 subdivision (h) of Section 17712.08 by being a debtor in
38 bankruptcy.

1 (D) In the case of a person that is not a trust other than a business
2 trust, an estate or an individual, the person is expelled or otherwise
3 dissociated as a member because it dissolved or terminated.

4 (c) A person that wrongfully dissociates as a member of a series
5 is liable to the series and, subject to Section 17706.01, to the other
6 members of that series for damages caused by the dissociation.
7 The liability is in addition to any other debt, obligation, or liability
8 of the member of a series to the series or the other members of
9 that series.

10 17712.08. A person is dissociated as a member of a series when
11 any of the following occur:

12 (a) The series has notice of the person's express will to
13 dissociate from the series, except if the person specifies a
14 dissociation date later than the date the series had notice, the person
15 is dissociated from the series on that later date.

16 (b) An event stated in the operating agreement as causing the
17 person's dissociation from the series occurs.

18 (c) The person is dissociated as a member of the limited liability
19 company pursuant to Section 17706.02.

20 (d) The person is expelled as a member of that series pursuant
21 to the operating agreement.

22 (e) The person is expelled as a member of the series by the
23 unanimous consent of the other members of that series if any of
24 the following applies:

25 (1) It is unlawful to carry on the series' activities with the person
26 as a member of that series.

27 (2) There has been a transfer of all of the person's transferrable
28 interest other than a transfer for security purposes, or a charging
29 order in effect under Section 17705.03 that has not been foreclosed.

30 (3) The person is a corporation and, within 90 days after the
31 series notifies the person that it will be expelled as a member of
32 that series because the person has filed a certificate of dissolution
33 or the equivalent, or its right to conduct activities has been
34 suspended by its jurisdiction of formation, the certificate of
35 dissolution or the equivalent has not been revoked or its right to
36 conduct activities has not been reinstated.

37 (4) The person is a limited liability company or partnership that
38 has been dissolved and its business is being wound up.

1 (f) On application by the series, the person is expelled as a
2 member of that series by judicial order because the person has
3 done any of the following:

4 (1) Has engaged in, or is engaging in, wrongful conduct that
5 has adversely and materially affected, or will adversely and
6 materially affect, that series' activities.

7 (2) Has willfully or persistently committed, or is willfully and
8 persistently committing, a material breach of the operating
9 agreement or the person's duty or obligation under this title or
10 other applicable law.

11 (3) Has engaged in, or is engaging in, conduct relating to that
12 series' activities that makes it not reasonably practicable to carry
13 on the activities with the person as a member of that series.

14 (g) In the case of a person who is an individual, one of the
15 following applies:

16 (A) The person dies.

17 (B) In a member-managed limited liability company either a
18 guardian or general conservator is appointed, or there is a judicial
19 order that the person has otherwise become incapable of performing
20 the person's duties as a member of a series under this title or the
21 operating agreement.

22 (h) The person becomes a debtor in bankruptcy.

23 (i) In the case of a person that is a trust or is acting as a member
24 by virtue of being a trustee of a trust, the trust's entire transferrable
25 interest is distributed, but not solely by reason of the substitution
26 of a successor trustee.

27 (j) In the case of a person that is an estate or is acting as a
28 member by virtue of being a personal representative of an estate,
29 the estate's entire transferrable interest, but not solely by reason
30 of the substitution of a successor personal representative.

31 (k) In the case of a member of a series that is not an individual,
32 the legal existence of the member otherwise terminates.

33 (l) The series terminates.

34 17712.09. (a) A person who has dissociated as a member of
35 a series shall have no right to participate in the activities and affairs
36 of that series and is entitled only to receive the distributions to
37 which that member would have been entitled if the member had
38 not dissociated from that series.

39 (b) A person's dissociation as a member of a series does not of
40 itself discharge the person from any debt, obligation, or liability

1 to that series, the limited liability company or the other members
2 that the person incurred while a member of that series.

3 (c) A member's dissociation from a series does not, in itself,
4 cause the member to dissociate from any other series or require
5 the winding up of the series unless the dissociated member was
6 the last remaining member of the series.

7 (d) A member's dissociation from a series does not, in itself,
8 cause the member to dissociate from the limited liability company.

9 17712.10. Except to the extent otherwise provided in the
10 operating agreement, a series and its business and affairs may be
11 wound up and terminated without causing the winding up of the
12 limited liability company.

13 17712.11. (a) Except as otherwise provided, the series
14 terminates on the completion of the winding up of the business
15 and affairs of the series in accordance with Sections 17707.03,
16 17707.04, 17707.05, and 17707.08.

17 (b) The limited liability company shall provide notice of the
18 termination of a series in the manner provided in the operating
19 agreement for notice of termination, if any.

20 (c) The termination of the series does not affect the limitation
21 on liabilities of the series provided by Section 17712.06.

22 17712.12. (a) To the extent not inconsistent with this article,
23 this article applies to a series and its associated members and
24 managers.

25 (b) For purposes of the application of any other provision of
26 this title to a provision of this article, and as the context requires:

27 (1) A reference to a "limited liability company" or a "company"
28 means the series.

29 (2) A reference to "member" means member of a series.

30 (3) A reference to "manager" means manager of a series.

31 17713.01. In applying and construing this uniform act,
32 consideration shall be given to the need to promote uniformity of
33 the law with respect to its subject matter among states that enact
34 it.

35 17713.02. This title modifies, limits, and supersedes the federal
36 Electronic Signatures in Global and National Commerce Act (15
37 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede
38 Section 101(c) of that act (15 U.S.C. Sec. 7001(c)), or authorize
39 electronic delivery of any of the notices described in Section 103(b)
40 of that act (15 U.S.C. Sec. 7003(b)).

1 17713.03. This title does not affect an action commenced,
2 proceeding brought, or right accrued before this title takes effect.

3 17713.04. (a) Before January 1, 2015, this title governs only
4 the following:

5 (1) A limited liability company formed on or after January 1,
6 2013.

7 (2) Except as otherwise provided in subdivision (c), a limited
8 liability company formed before January 1, 2013, that elects, in
9 the manner provided in its operating agreement or bylaw for
10 amending the operating agreement, to be subject to this title.

11 (b) Except as otherwise provided in subdivision (c), on and after
12 January 1, 2015, this title governs all limited liability companies.

13 (c) For the purposes of applying this title to a limited liability
14 company formed before January 1, 2013, all of the following apply:

15 (1) The limited liability company's certificate of organization
16 is deemed to be the limited liability company's certificate of
17 organization.

18 (2) For the purposes of applying subdivision (n) of Section
19 17701.02 and subject to subdivision (d) of Section 17701.12,
20 language in the limited liability company's certificate of
21 organization designating the limited liability company's
22 management structure operates as if that language were in the
23 operating agreement.

24 17713.05. This title shall become operative on January 1, 2013.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.